

**STAFF REPORT FOR CALENDAR ITEM NO.: 17**  
**FOR THE MEETING OF: September 8, 2016**

**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 NetXperts, Inc., (NetXperts) as the responsible bidder submitting the lowest responsive bid in the amount of \$4,679,573 for TG27.1: Data Network and Systems Integration (TG27.1), thereby increasing authorized Direct Costs by \$4,679,573, and increasing the authorized Construction Services Fixed Fee by \$163,785, under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, ¶5.01B.

**EXPLANATION:**

On March 2, 2016, the CM/GC issued a Request for Qualifications (RFQ) for TG27.1. On March 23, three firms responded to the RFQ; a fourth firm submitted its qualifications package during the bid period. A selection committee consisting of representatives from the TJPA, CM/GC, Construction Management Oversight consultant and Program Management/Program Controls consultant reviewed and scored each firm's qualifications for technical merit. Based on its evaluation, the selection committee determined that all four bidders, listed below, were qualified and free of conflicts of interest:

- Cupertino Electric, Inc.
- Fisk Electric Company
- NetXperts, Inc.
- World Wide Technology, Inc.

On July 7, 2016, the TG27.1 package was issued for bid. A pre-bid conference was held on July 19, 2016. One addendum was issued during the bid period to incorporate bidder questions and responses into the Contract Documents.

The scope of work under this package includes data network equipment procurement, installation, and systems integration. The scope 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. TG27.1 consists of internet protocol (IP) equipment (servers, switches, and routers) that processes data for communications and other IP-based systems at the Transbay Transit Center. The networks and systems include the local area network (LAN), wide area network (WAN), wireless local area network, internet access, and network security. Transit Center systems that require the converged network include the building management control system for the heating, ventilating, and cooling; security access control systems for doors and operable barriers; video management systems (cameras); and fire and life safety management systems, among others. The major elements of this package consist of the following:

- LAN/WAN
- WiFi & Mobility

- IP Telephony
- Network Security
- Terminal Servers
- Network Implementation

Bidders had the option of submitting value engineering proposals prior to the bid date. No value engineering proposals were received. On August 17, 2016, four bids were received, opened and evaluated. Below is a summary of the bid results:

Bidder Name	Fisk Electric Company	Cupertino Electric, Inc.	NetXperts, Inc.	World Wide Technology, Inc.
<b>Bid Amount</b>	\$19,257,000	\$7,949,000	\$4,679,573	\$4,375,285

Both World Wide Technology, Inc. and Cupertino Electric, Inc. failed to comply with the Buy America certification requirements under 49 CFR Part 661. World Wide Technology, Inc. failed to submit any Buy America certification, and Cupertino improperly certified both compliance and non-compliance in its Buy America certification. Due to these failures and errors, both World Wide Technology, Inc. and Cupertino's bids were deemed non-responsive per Federal Transit Administration (FTA) regulations.

NetXperts submitted the lowest responsive bid in the amount of \$4,679,573. NetXperts' bid includes 15% Small Business Enterprise (SBE) participation, meeting the 15% SBE goal on the package with a San Francisco-based State-certified SBE firm.

NetXperts certified non-compliance with Buy America, as the Cisco and Aruba components are manufactured outside of the United States, but qualified that non-compliance by stating that it would comply with the Buy America requirements under 49 CFR Part 661 with the appropriate FTA waivers. Given the scope of work under this package and the bid documentation received, two waivers likely apply: (1) the general public interest waiver; and (2) the non-availability waiver.

TJPA staff met with regional FTA staff on April 20, 2016 to discuss whether the data network systems are subject to the "general public interest waiver" for microprocessors and other devices under 49 CFR Part 661.7 Appendix A (b), which states:

*Under the provisions of §661.7 (b) and (c) of this part, a general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.*

On July 19, 2016, in response to a June 1, 2016 informal request from TJPA, the FTA requested additional information in support of the application of the "general public interest waiver" to be submitted by TJPA in a formal request. TJPA submitted the formal request to the FTA on August 1, 2016. The FTA then requested more specific information, which was provided by TJPA on August 9, 2016. The formal request is currently under review by the FTA.

In addition to the applicability of the “general public interest waiver,” support for the applicability of the “non-availability waiver” to TG27.1 was provided in the bid documents submitted by all four bidders in that no bidder certified unqualified compliance. Under 49 CFR Part 661.7(c)(1), if no bidder certifies compliance, it is presumed that conditions exist to grant a “non-availability waiver.”

Based on discussions with the FTA to date and the bid documentation submitted by the bidders, TJPA anticipates that the “general public interest waiver” will apply to a majority of the work under TG27.1. To the extent some of the work is not subject to the “general public interest waiver,” such work may be exempt from the Buy America requirements if determined to be a subcomponent. If neither subject to the “general public interest waiver” nor exempt based upon a subcomponent determination, a “non-availability waiver” will be prepared and submitted to the FTA for the work in question.

TJPA’s budget for TG27.1 is \$13 million, and the engineer’s estimate is \$11.5 million. It is recommended to place the balance between the bid amount and the budget, less the CM/GC fee of \$163,785, the Subguard premium of \$45,860, and CM/GC Contingency of \$187,183, into the Program Reserve, thereby increasing the Program Reserve by \$7,923,599 to a total of \$124,891,974.

One bid protest was received during the bid protest period, which ended on August 24, 2016, from NetXperts. However, given that NetXperts was the responsible bidder submitting the lowest responsive bid, NetXperts withdrew its protest on August 26, 2016.

This Trade Work Subcontract is anticipated to be funded by TJPA’s TIFIA Loan. TJPA staff notified the Cost Review Committee (CRC) formed under the Transbay Project Cost Oversight Agreement between TJPA, the City and County of San Francisco, and the Metropolitan Transportation Commission that it planned to recommend award of this package to the TJPA Board in an amount not to exceed the budget. The CRC is newly formed and has not fully established procedures, but has stated that it is likely the CRC will flag an item recommended for award only if they identify an issue to be addressed, and otherwise will not provide recommendations regarding contract awards or amendments to the TJPA Board. The CRC did not have any objections to the award of TG27.1.

**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 NetXperts, Inc., as the responsible bidder submitting the lowest responsive bid in the amount of \$4,679,573 for TG27.1: Data Network and Systems Integration, thereby increasing the authorized Direct Costs by \$4,679,573, and increasing the authorized Construction Services Fixed Fee by \$163,785, under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, ¶5.01B. In addition, an amount of \$45,860 would be authorized for the Subguard premium for this Trade Subcontract.

**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 3.5% of Direct Costs (Contract, Section 00 05 20, ¶5.01); and

WHEREAS, On July 7, 2016, the CM/GC issued an Invitation for Bids for TG27.1: Data Network and Systems Integration (TG27.1) for the Transbay Transit Center to procure, install, and integrate the data network and systems in accordance with the Contract Documents; and

WHEREAS, Under TG27.1, the Trade Subcontractor will perform all data network and systems integration construction-related activities for the Transbay Transit Center; and

WHEREAS, On August 17, 2016, four bids were received and opened publicly; and

WHEREAS, CM/GC and TJPA have determined that NetXperts, Inc., is the responsible bidder submitting the lowest responsive bid, with a bid of \$4,679,573; and

WHEREAS, Funds for this Trade Work Subcontract are anticipated to be available from TJPA's TIFIA Loan; and

WHEREAS, The award of this Trade Work Subcontract has been presented to the Transbay Project Cost Review Committee, with no objections; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the CM/GC to execute a Trade Work Subcontract for TG27.1 with NetXperts, Inc., as the responsible bidder submitting the lowest responsive bid in the contract amount of \$4,679,573; and be it

FURTHER RESOLVED, That upon award of the Trade Work Subcontract to NetXperts, Inc., 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 NetXperts, Inc., for TG27.1 by increasing authorized Direct Costs by \$4,679,573, and increasing the authorized Construction Services Fixed Fee by \$163,785 under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, ¶5.01B; and be it

FURTHER RESOLVED, That \$45,860 is also authorized for the Subguard premium for this Trade Work Subcontract.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of September 8, 2016.

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Secretary, Transbay Joint Powers Authority

**AGREEMENT**  
**AMENDMENT NO. 63**  
**BETWEEN**  
**TRANSBAY JOINT POWERS AUTHORITY**  
**AND**  
**WEBCOR/OBAYASHI JOINT VENTURE**

THIS AMENDMENT for AGREEMENT is entered into as of the 8<sup>th</sup> day of September, 2016, by and between the TRANSBAY JOINT POWERS AUTHORITY (TJPA) and Webcor/Obayashi Joint Venture (CM/GC). By this Amendment No. 63, 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. 63. 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 TG27.1 Data Network and Systems Integration package on July 7, 2016, and received and publicly opened four bids on August 17, 2016.

**D.** NetXperts, Inc., was the responsible bidder submitting the lowest responsive bid in the amount of \$4,679,573.

**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 \$4,843,358 (Trade Package Direct Costs of \$4,679,573 and CM/GC Fixed Fee, calculated at 3.5 percent of Direct Costs, of \$163,785) and the award of Trade Subcontract No. TG27.1 to NetXperts, Inc., for performance of the construction of TG27.1 Data Network and Systems Integration.

**2.** The detailed scope of work and schedule incorporated by this Amendment is provided in the Contract Documents dated December 16, 2014, and all associated Addenda.

IN WITNESS WHEREOF, the parties hereto have executed this contract Amendment No. 63 on the day first mentioned above.

TRANSBAY JOINT POWERS AUTHORITY

\_\_\_\_\_  
Mark Zabaneh  
Interim 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