

**STAFF REPORT FOR CALENDAR ITEM NO.: 11
FOR THE MEETING OF: December 8, 2011**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Amending Contract No. 08-04-CMGC-000, Construction Manager/General Contractor (CM/GC) Services for the Construction of the Transbay Transit Center Building and Related Structures, with the joint venture of Webcor Builders and Obayashi Corporation (Webcor/Obayashi) to increase the time for preconstruction services to 160,000 hours and adjust the contract sum to reflect the final cost of services performed under Amendment No. 02.

EXPLANATION:

On January 17, 2008, the TJPA Board approved the use of Integrated Project Delivery for the construction of the Transbay Transit Center and Bus Ramps and authorized the Executive Director to issue a Request for Proposals (RFP) for CM/GC to pre-qualify, bid and direct construction of the project. The CM/GC approach was selected over Design-Bid-Build and Design-Build contracting approaches to establish collaboration between the contractor and designers, improve the quality of design, optimize constructability, and provide flexibility in the scope, schedule and sequencing of construction.

On March 12, 2009, the TJPA Board approved the award of the CM/GC contract, to Webcor/Obayashi. Under the contract, Webcor/Obayashi would bid, direct, and coordinate the construction of the Phase 1 elements of the Transit Center on a time and materials basis. Under the contract, Webcor/Obayashi bills a blended rate of \$122 per hour for preconstruction services including design and constructability reviews, cost estimating and value management, outreach to and prequalification of subcontractors, and preparation of trade packages for bidding from the design documents prepared by the design team led by Pelli Clarke Pelli Architects. In the CM/GC RFP, a projection of 45,000 hours of preconstruction services was stipulated in the bidding documents as a basis for comparing proposals and ultimately for the initial contract award. Under the contract, pre-construction services are authorized for specific task lists and time periods under notices to proceed establishing a not-to-exceed amount for the period.

At the time of the contract award, Phase 1 construction did not include the rail levels of the station, and the construction was planned to begin in September 2009. Construction was expected to take five years and the bidding of trade packages was to occur over a three year period. Subsequent to the award of the CM/GC contract, the schedule for completion of the design and start of construction was extended to allow additional time for the development of the design and to study constructability and value engineering opportunities.

On May 10, 2010, the TJPA Board adopted a Revised Baseline Budget and Schedule incorporating the construction of the train box into Phase 1. Concurrent with the change decision to revise the plan for design and construction to anticipate the inclusion of the train box in the first phase of construction, the contractor was nearing the initially stipulated limit on pre-construction hours. Consequently, on July 15, 2010, Amendment No. 6 to the contract with

Webcor/Obayashi was submitted to and approved by the board increasing the number of preconstruction services hours to 110,800.

At the time that Amendment No. 6 was approved, the change to a bottom-up construction approach anticipated that the TJPA would be successful in its application for American Recovery and Reinvestment Act (ARRA) funding or other funding pursuits to finance the construction of the rail levels of the station, but the exact timing of a grant agreement that would allow the start of construction was not established. After the ARRA awards were announced, the TJPA engaged with the Federal Railroad Administration, Caltrain, and California High Speed Rail Authority (CHSRA) to certify that the design and configuration of the rail levels were consistent with the needs and requirements of CHSRA and Caltrain. This exchange precipitated design changes – in particular, to accommodate the requests of the CHSRA – that further extended the schedule for completion of the Transit Center design.

The schedule for designing and bidding the Phase 1 construction has also been refined to reflect timing constraints and best leverage changes in technology while maintaining the overall schedule for completion of Phase 1 construction. The design team will not finalize the security, signage and information technology systems until 2014 to ensure that the final construction documents reflect the most current situational awareness strategies and incorporate the most current technology. Additionally, the schedule for bidding construction packages has been coordinated with the schedule for the receipt of land sales proceeds required to certify their awards. These changes have introduced additional design submittals requiring CM/GC review and extended the overall duration of the pre-construction effort contributing to the final pre-construction services projection.

In the preconstruction phase Webcor/Obayashi has provided critical advice on the relative advantages, challenges, cost and duration of constructing the Transit Center from the top-down or bottom-up approach, and their input on the design of the Transit Center and the coordination of design documents has helped contain costs and reduce the potential for future changes during construction. Their work has been central to the TJPA's value management efforts, the validation of construction cost estimates, and the establishment of the Revised Phase 1 Baseline Budget and Schedule.

The scope and schedule of Phase 1 design and construction has evolved considerably, with the inclusion of the train box and the associated change in construction approach, in the number and schedule for design submittals, and in the timing and partitioning of the construction for bidding. The number and complexity of trade packages that Webcor/Obayashi will review, estimate, prepare and bid has increased, as has the period of time over which those packages will be bid.

These changes in the design and bidding schedules have extended the period for CM/GC bidding and preconstruction services and introduced additional design submittals for CM/GC review and packaging. By this Amendment No. 20, the TJPA increases the authorization for preconstruction services to a maximum of 160,000 hours.

In addition, on July 31, 2009, the TJPA Board adopted Amendment No. 2 to the CM/GC Contract authorizing Webcor/Obayashi to construct, as a preconstruction service, test segments

of the proposed shoring wall and buttress elements to validate and document the performance and productivity of the proposed design and construction equipment in our site conditions. In the course of designing the Buttress, Shoring, and Excavation (BSE) work, the design team recommended the TJPA implement a test program to compare different methods of constructing the shoring wall and to establish the capability and productivity of equipment proposed to construct the buttress. The test panels would have been required as part of the BSE trade package, but by performing the tests prior to bidding the work, the test results were available to be provided to prospective bidders to inform their proposals. By validating the design and construction methodology, delays and expenses that would have been incurred had problems been identified in a post-bid test were also avoided.

The work under Amendment No. 02 was to be performed for a not-to-exceed limit of \$4,150,000, and was completed at a cost of \$3,631,821.11. This cost needs to be incorporated into the final preconstruction services contract amount.

RECOMMENDATION:

Staff recommends that the TJPA Board of Directors authorize amending Contract No. 08-04-CMGC-000, Construction Manager/General Contractor (CM/GC) Services for the Construction of the Transbay Transit Center Building and Related Structures, with the joint venture of Webcor Builders and Obayashi Corporation, to increase the cap for preconstruction services to 160,000, and to modify the contract sum to reflect the final cost of the geotechnical test program authorized under Amendment No. 02.

ENCLOSURE:

1. Resolution
2. Amended Contract Section

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On January 17, 2008, the Transbay Joint Powers Authority (TJPA) Board approved the use of Integrated Project Delivery for the construction of the Transbay Transit Center and Bus Ramps to establish collaboration between the contractor and designers, improve the quality of design, optimize constructability, and provide flexibility in the scope, schedule and sequencing of construction; and

WHEREAS, On June 20, 2008, the TJPA issued a Request For Qualifications for TJPA Contract No. 08-04-CMGC-000, Construction Manager/General Contractor (CM/GC) Services for the Construction of the Transbay Transit Center Building and Related Structures including preconstruction services and construction administration services consistent with those of a general contractor; and

WHEREAS, On March 12, 2009, the TJPA Board adopted Resolution No. 09-004 authorizing the award of TJPA Contract No. 08-04-CMGC-000, CM/GC Services for the Construction of the Transbay Transit Center Building and Related Structures, Phase 1, to the joint venture of Webcor Builders and Obayashi Corporation (Webcor/Obayashi); and

WHEREAS, Under their bid, Webcor/Obayashi would bill a blended rate of \$122 per hour for preconstruction services including design and constructability reviews, cost estimating and value management, outreach to and prequalification of subcontractors, and preparation of trade packages for bidding from the design documents prepared; and

WHEREAS, At the time of award of the CM/GC contract, phase 1 had a construction value of \$500,000,000, and the assumed start of construction was to be September 2009; and

WHEREAS, On June 10, 2010, the TJPA Board adopted a Revised Baseline Budget and Schedule incorporating the construction of the train box into Phase 1; and

WHEREAS, The schedule for design and bidding of Phase 1 construction has been revised to reflect timing constraints and best leverage changes in technology while maintaining the overall schedule for completion of Phase 1 construction introducing additional design submittals requiring CM/GC review and extended the overall duration of the preconstruction effort; and

WHEREAS, The full scope of CM/GC preconstruction services is forecast to be accomplished within 160,000 total hours; and

WHEREAS, The scope of Amendment No. 2 was authorized for an amount not to exceed \$4,150,000 and was completed for \$3,631,821.11; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes amending Contract No. 08-04-CMGC-000, Construction Manager/General Contractor Services for the Construction of the Transbay Transit Center Building and Related Structures, with the joint venture of Webcor Builders and Obayashi Corporation, to increase the time for preconstruction services to 160,000 hours and to modify the contract sum to reflect the final cost of the geotechnical test program authorized under Amendment No. 02.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of December 8, 2011.

Secretary, Transbay Joint Powers Authority

AGREEMENT
AMENDMENT NO. 20
BETWEEN
TRANSBAY JOINT POWERS AUTHORITY
AND
WEBCOR/OBAYASHI, J.V.

THIS AMENDMENT for AGREEMENT is entered into as of the ____ day of _____, 20____ by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and Webcor/Obayashi, J.V. (the "CM/GC"). By this Amendment No. 20, the TJPA and the CM/GC hereby modify the Agreement No. 08-04-CMGC-000 dated March 17, 2009 (the "Agreement"), as modified previously by Amendment Nos. 1 through 19, only to the extent expressly provided in this Amendment No. 20. 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"). Pre-construction services authorized in the award were limited to a maximum of 45,000 hours at a blended rate of \$122/hour.

B. On May 10, 2010, the TJPA Board approved the Revised Phase 1 Baseline Budget and Schedule incorporating the design and construction of the Train Box rail levels of the Transit Center into Phase 1 of the Transbay Transit Center Program, which increased the schedule duration of the CM/GC Agreement.

C. On July 15, 2010, the TJPA Board approved Amendment No. 06, increasing the scope of CM/GC pre-construction services up to 110,800 hours.

D. Subsequent to the approval of Amendment No. 6, the schedule for designing and bidding the Phase 1 construction has been modified to reflect timing constraints and best leverage changes in technology. The design team will postpone finalizing the security, signage and information technology systems until 2014 to ensure that the construction documents reflect the most current situational awareness strategies and incorporate the most current technology. Additionally, the schedule for bidding construction packages has been coordinated with the schedule for land sales required to certify their awards.

E. These changes in the design and bidding schedules have extended the period for CM/GC bidding and pre-construction services and introduced additional design submittals for CM/GC review and packaging. By this Amendment No. 20, the TJPA increases the authorization for pre-construction services to a maximum of 160,000 to account for these and other changes.

F. Additionally, on July 31, 2009, the TJPA Board approved Amendment No. 02 to the Agreement authorizing Webcor/Obayashi to construct, as a pre-construction service, test segments of the proposed shoring wall and buttress elements to validate and document the

performance and productivity of the proposed construction and equipment on the Transbay site ("SW/B Tests").

G. The work authorized under Amendment No. 02 was to be performed for a not-to-exceed limit of \$4,150,000, and was completed at a cost of \$3,631,821.11. The cost of the SW/B Tests was not added to the total contract sum for pre-construction services; thus this Amendment No. 20 increases the contract sum by \$3,631,821.11 reflecting the final cost of the test services.

Terms and Conditions

1. Modifications to Agreement (Section 00 05 20). The parties acknowledge and agree that the Agreement (Contract Section 00 05 20), at paragraphs 5.01, is hereby modified to provide as follows. For purposes of convenience, the changes to the original language are indicated by redline strikeout (deletions) or double underline (additions)

5.01 Contract Sum. The amount to be paid to the CM/GC for all Work performed under this AGREEMENT shall not exceed ~~Nine Hundred Ninety-Four Million Five Hundred Sixteen Thousand Six Hundred Dollars and No Cents (\$994,517,600.00)~~. One Billion Four Hundred Million One Hundred Fifty-One Thousand Eight Hundred Twenty One Dollars and Eleven Cents (\$1,004,151,821.11). The Contract Sum is comprised of the following: (A) the Pre-Construction Services Fee and (B) the Construction Services Fee of (1) the aggregate value of the awarded Trade Work subcontracts (Direct Costs) and (2) the CM/GC Construction Services Fixed Fee (the "CM/GC Fixed Fee"). This not-to-exceed amount does not include any payments made to the CM/GC for allowed and approved expenditures from the CM/GC Contingency, described in Article 6 of this AGREEMENT, or Reimbursable Expenses, as described below. In the event that during the bidding of Trade Work Packages, the TJPA determines that the budgeted amount for the Trade Packages will or most likely will be exceeded, the TJPA shall have the right to direct the re-bid of certain Trade Packages to reduce the cost and shall, if necessary, have the right to terminate the Contract for its convenience. If, upon Final Completion of the Work, the final Contract Sum (less the Pre-Construction Services Fee and Contingency Payments) is less than the budgeted amount, the difference between the final Contract Sum and the not-to-exceed amount will accrue to the benefit of the TJPA.

The TJPA will adjust the value of the Contract Sum during the course of the Project to reflect the amount of: (a) the cost of Pre-Construction Services, (b) awarded Trade Work Subcontracts plus CM/GC Fixed Fee, and (c) any other changes in the Work that affect the value of the Contract.

A. **Pre-Construction Services.** The CM/GC will be paid for Pre-Construction Services based on the blended rate of \$122 (One Hundred Twenty-Two Dollars)/hour as set forth in the CM/GC's Project Fee Proposal Schedule (attached as Attachment B to this AGREEMENT), up to a maximum of 160,000 ~~110,800~~ hours. The blended hourly rate includes all of the CM/GC's profit for Pre-Construction Services, and all costs incurred by the CM/GC, including but not limited to any materials, payroll, overhead and administrative costs, travel and living expenses, licenses, insurance, incidents, and any other fees or expenses incurred by CM/GC in providing Pre-Construction Services.

1. The TJPA, at its sole discretion, will assign Pre-Construction phase Work to CM/GC. The TJPA makes no representation that all 160,000 ~~110,800~~ hours will be required for Pre-Construction Services during the course of the Project.

2. The blended hourly rate shall apply to all members of CM/GC's team who provide Pre-Construction Services. Payment for Pre-Construction Services will be subject to CM/GC providing the TJPA with sufficient back-up documentation demonstrating to the TJPA's reasonable satisfaction that services were performed justifying payment at the agreed-upon hourly rate.

3. The Pre-Construction Services shall also independently include the SW/B Tests authorized in Amendment No. 02 and completed for a total sum of \$3,631,821.11. This total sum is not part of the 160,000 hours.

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IN WITNESS WHEREOF, the parties hereto have executed this contract Amendment No. 20 on the day first mentioned above.

TRANSBAY JOINT POWERS AUTHORITY

Maria Ayerdi-Kaplan
Executive Director

Transbay Joint Powers Authority

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

Secretary, TJPA Board

Approved as to Form:

By _____
TJPA Legal Counsel

CM/GC

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 55, San Francisco's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Authorized Signature

Printed Name

Title

Webcor/Obayashi, Joint Venture

Company Name

Address

City, State, ZIP

Phone Number

Federal Employer ID Number