

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 03-08

For the purpose of selecting "JT Stephens Construction Company," Salem, OR, as the lowest responsive and responsible bidder in response to Request For Bids , relating to the "Keller Orchestra Level Remodel Project," and authorizing the General Manager to execute a contract with "JT Stephens Construction Company," Salem, OR.

Whereas, remodeling of patron facilities on the Orchestra Level of the Keller Auditorium, in the public interest, to improve efficiency of operation of those facilities and

Whereas, Section 6.1 of the Commission's Purchasing Policies And Guidelines delegates authority to the General Manager to prepare and approve Request for Bids (RFB) documents and to solicit bids; and

Whereas, MERC staff, under the direction of the General Manager, prepared and issued a Request for Bids for the Keller Auditorium Orchestra Level Remodel Project; and

Whereas, ten (10) bidders submitted bids in response to the Request for Bids, issued on January 20, 2003; and

Whereas, Section 6.1 of the Commission's Purchasing Policies And Guidelines requires the Commission to select the lowest responsive and responsible bidder, approve the contract award, and approve the written contract by resolution; and

Whereas, MERC staff has evaluated the bids, and JT Stephens Construction Company, is the lowest responsive and responsible bidder.

BE IT THEREFORE RESOLVED as follows:

1. The Metropolitan Exposition-Recreation Commission selects JT Stephens Construction Company, Salem, OR, as the lowest responsive and responsible bidder in response to the Request For Bids for the Keller Auditorium Orchestra Level Remodel, issued on January 20, 2003;
2. The Metropolitan Exposition-Recreation Commission approves the award of a contract, in a form substantially similar to the attached Exhibit "A," to JT Stephens Construction Company, Salem, OR.
3. The Metropolitan Exposition-Recreation Commission authorizes the General Manager to execute the contract on behalf of the Commission.

Passed by the Commission on February 26, 2003.

Chair

Secretary/Treasurer

Approved as to Form:
Daniel B. Cooper, General Counsel

By:

Senior Assistant Counsel

Attachment: Exhibit "A", MERC Contract Form with JT Stephens Construction Company, Salem, OR.

MERC STAFF REPORT

Agenda Item: Award of Bid and Approval of Contract with JT Stephens Construction Company, of Salem, OR, for performance of the Keller Auditorium Orchestra Level Remodel Project.

Resolution No. 03-08

Date: February 26, 2003

Presented by: Robyn Williams or Mark Hunter

Background/Analysis:

On July 23, 2002, a contract was entered into with Beaman Architecture to perform design services for the addition of Women's Restrooms, relocation of the Coat Check Room, relocation of Concessions Area and modification to the existing Ticket Office at the Keller Auditorium Orchestra Level, for the purpose of improving all associated services to the patrons of the facility.

The design phase for the project was completed in early January this year, and subsequently put out to Bid for Construction Services on January 20, 2003, with a target date for completion of construction by June 15, 2003.

On February 11, 2003, Bids were publicly opened and read. Ten Bids were received, with JT Stephens Construction Co., Salem, OR, being determined by Staff, based on compliance with all requirements of the Bid Documents, to be the lowest "responsive and responsible" Bidder, at a total combined Bid amount of \$169,768.00. The highest bid was \$246,000.00.

A subsequent Notice of Intent to Award was issued to all Document Holders, pending formal award by the Metropolitan Exposition-Recreation Commission (Commission) at their next regular meeting.

Financial Considerations:

The Construction Services Budget for the Project is \$230,000.

Other Considerations:

The deadline for filing protests of the Intent to Award has passed with no protests being filed.

Recommendation:

Staff recommends that the Commission accept the Bid of JT Stephens Construction Co., Salem, OR, as the lowest responsive and responsible Bidder, and in accordance with the MERC Purchasing Policy, Approved (by the Commission) July 24, 2002, authorize the General Manager to execute a contract with JT Stephens Construction Co., for the completion, in accordance with the Bid Documents, the Keller Auditorium Orchestra Level Remodel Project, for the amount of \$169,768.00.

CONSTRUCTION AGREEMENT

Contract # 924803

This Construction Agreement is made by and between JT Stephens Construction Company, Salem, OR, hereinafter called Contractor and the Metropolitan Exposition-Recreation Commission; a metropolitan commission established by METRO to renovate, maintain and operate metropolitan convention, trade and spectator facilities pursuant to ORS 268.395, 268.400 and 268.310(6); hereinafter called MERC, for the Portland Center for the Performing Arts, Keller Auditorium, Orchestra Level Remodel Project.

The Contractor and MERC agree as follows:

1. Contract Documents

The Contract Documents consist of this Construction Agreement, the Advertisement for Bids, the Invitation to Bid, the Instructions to Bidders, the Bid Forms (including Bid price sheet with signature pages, Surety name request, Resident/Non-resident Bidder Status, Non-Collusion Affidavit, Bid Bond, MBE/WBE Business Program Compliance forms, MBE/EBE/WBE Utilization forms, the Certificate of Compliance for Recycled Materials), Prevailing Wage Rate Compliance, the Performance and the Labor and Materials Payment Bonds, the General Conditions, the Supplementary Conditions, the Technical Specifications, the Drawings, the approved and updated Construction Schedule, and other information and data as listed in the Supplementary Conditions, and any modifications of any of the foregoing in the form of Addenda or Change Orders in accordance with the terms of the Contract. Where applicable, reference to this Construction Agreement herein shall be deemed to refer to all of the Contract Documents.

These documents form the Contract and are, by this reference, expressly incorporated herein. All are as fully a part of the Contract as if attached to this Construction Agreement and repeated fully herein. No amendment made to this Contract nor Change Order issued shall be construed to release either party from any obligation contained in the Contract Documents except as specifically provided in any such amendment or Change Order.

2. Scope of Work

Contractor agrees to provide all labor, tools, equipment, machinery, supervision, transportation, permits and every other item and service necessary to perform the Work described in the Contract Documents. Contractor agrees to fully comply with each and every term, condition and provision of the Contract Documents.

3. Contract Amount

As consideration for Contractor's performance hereunder, MERC agrees to pay Contractor the Contract Amount as adjusted by approved Change Orders issued pursuant to the Contract Documents. Contractor agrees to accept the Contract Amount as full payment for Contractor's performance of the above described Work. Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from MERC or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279.314. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment the person may file a

complaint with the Construction Contractors Board unless due to a good faith dispute as defined by ORS 297.445. Contractor must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract. No liens or claims are permitted to be filed against METRO or MERC on account of any labor or material furnished. Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

The Contract Amount is \$169,768.00, (One Hundred Sixty Nine Thousand Seven Hundred Sixty Eight and 00/100 dollars). MERC shall make payments to Contractor in the manner and at the times provided in the Contract Documents.

4. Additional or Deleted Work

Contractor shall, when so instructed by MERC under the procedures of the Contract Documents, perform additional Work or delete Work in accordance with the Contract Documents. Any increase or decrease in the Contract Amount shall be determined pursuant to the applicable provisions of the Contract Documents.

5. Time of Completion; Adjusted Payments; Agreement Term

Time is of the essence of this Construction Agreement. The Contract Time shall commence upon issuance of the Notice to Proceed which is anticipated to be issued following execution of the contract and acquisition of the building permit. Contractor shall commence work under this Contract within no more than (10) calendar days after issuance of written Notice to Proceed. Contractor shall bring the work to substantial completion no later than **June 25, 2003, or at such date to be extended by equal days beyond a building permit acquisition date of March 15, 2003, or as may be extended by Change Order approved by Contractor and Owner.** By executing this Construction Agreement, Contractor confirms and accepts that the substantial completion deadline so stated is a reasonable period for performance of all of the Work. This Agreement/Contract Term shall be from the date of Notice to Proceed through August 31, 2003, unless otherwise extended by Addendum signed by both parties to this Agreement. The end date of the Contract Term is intended to allow for finalization of all closeout requirements, receipt of warranties, manuals and final payment, but does not alter requirements for substantial completion of the work by the date specified.

If Contractor fails to substantially complete the Work, within the Contract Time, as determined by MERC in accordance with the Contract Documents, Contractor may be subject to liquated damages to MERC as described in the Contract Documents, General Conditions, section 00700.

6. Bonds

Contractor submits herewith a Performance Bond and a separate Labor and Materials Payment Bond, both in a form acceptable to MERC and otherwise in accordance with the Contract Documents and each in the Contract Amount to ensure full compliance, execution and performance of this Contract by Contractor and payment by Contractor of labor and material Suppliers as more fully described in the Contract Documents.

7. Remedies for Default

If Contractor fails to perform as specified in the Contract Documents, MERC shall be entitled to all the rights and remedies which this Contract provides, as well as all remedies provided by law. This Contract shall not be construed as limiting or reducing the remedies provided by law which MERC would have in the absence of any provision of the Contract.

8. Laws of Oregon Apply

The laws of Oregon shall govern the interpretation and construction of this Construction Agreement and all of the Contract Documents.

9. Entire Agreement

The Contract Documents constitute the final written expression of all of the terms of this Construction Agreement and are a complete and exclusive statement of those terms. Any and all representations, promises, warranties, or statements by either party that differ in any way from the terms of this written agreement shall be given no force and effect. This Contract shall be changed, amended, or modified only by written instrument signed by both MERC and Contractor. This Contract shall not be modified or altered by any course of performance by either party.

CONTRACTOR

By: [Signature]

Title: Pres.

Date: 3 Mar 03

MERC

By: [Signature]

Title: GENERAL MANAGER

Date: 3/11/03