

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 03-25

For the purpose of selecting CMJ Construction, Inc as the lowest responsive and responsible bidder in response to Request For Bids relating to Oregon Convention Center Expansion Operations Remodel (Phase I) , and authorizing the General Manager to execute a contract with CMJ Construction.

WHEREAS, the remodeling of the Oregon Convention Center Operations locker and break room areas is budgeted within the OCC Expansion Project, pending available funding ; and

WHEREAS, funds have become available through savings in the OCC Expansion Project and are available to finance the OCC Operations Remodel (Phase I); 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 Oregon Convention Center Operations Remodel (Phase I); and

WHEREAS, four (4) bidders submitted bids in response to the Request for Bids for the OCC Operations Remodel Phase I; and

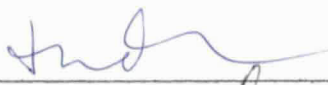
WHEREAS, Section 6.1 of the Commission's Purchasing Policies And Guidelines requires the Commission to select the lowest responsive and responsible bidder, approve the contract award, and approve the written contract by resolution; and

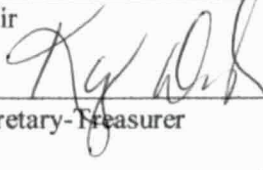
WHEREAS, MERC staff has evaluated the bids, and CMJ Construction, Inc. is the lowest responsive and responsible bidder.

BE IT THEREFORE RESOLVED as follows:

1. The Metropolitan Exposition-Recreation Commission selects CMJ Construction, Inc. as the lowest responsive and responsible bidder in response to Request For Bids for OCC Operations Remodel (Phase I);
2. The Metropolitan Exposition-Recreation Commission approves the award of a contract, in a form substantially similar to the attached Exhibit "A," to CMJ Construction, Inc.;
3. The Metropolitan Exposition-Recreation Commission authorizes the General Manager to execute the contract on behalf of the Commission.

Passed by the Commission on June 25, 2003.



Chair


Secretary-Treasurer

Approved As To Form:

Daniel B. Cooper, General Counsel

By:



Senior Assistant Counsel

MERC STAFF REPORT

Agenda Item/Issue: Accepting CMJ Construction, Inc.'s bid for the Oregon Convention Center Operations Remodel Phase I, and authorizing the MERC General Manager to execute a contract with CMJ Construction, Inc.

Resolution No: 03-25

Date: June 25, 2003

Presented By: Tary Carlson

Background: The remodel of the Oregon Convention Center Operations' locker and break room areas (Phase I) was identified in the OCC Expansion Project as GMP Alternate #20. Funding for this work was originally approved via MERC Resolution 02-14 dated April 24, 2002 through Change Order #2 to the GMP contract with Hoffman Construction. However, Change Order #2 (REVISED) to the GMP, approved via MERC Resolution 02-33 on October 23, 2002, re-allocated the funds to other priority projects. The OCC Operations Remodel (Phase I) project was put on hold pending availability of future funding.

Due to recently identified GMP savings from the OCC Expansion Project, funds have become available to proceed with OCC Operations' Remodel (Phase I). An RFP for this work was released May 5, 2003. On May 29, 2003 bids were received from (4) general contractors. Bids were reviewed by Tary Carlson, OCC Expansion and Mark Hunter, MERC. On June 2, 2003 notice was given to all general contractor bidders that it was determined CMJ Construction, Inc. was the low responsive and responsible bidder with a bid of \$299,347.00.

On June 6, 2003, the OCC Expansion Office received a letter from Pacific Coast Construction protesting the award of the contract to CMJ Construction, Inc. Pacific Coast Construction is the apparent second lowest responsive and responsible bidder with a bid of \$309,730, a difference of \$10,383. The basis of the protest was that CMJ Construction, Inc. had not complied with the bid documents which required that any certified minority subcontractor that attends the pre-bid meeting, documented by a published sign-in sheet, will be contacted as part of the good faith effort to involve minority subcontractors. The protest letter identified a minority subcontractor that had attended the May 15, 2003 pre-bid meeting, but was not listed as having been contacted by CMJ Construction, Inc on their good faith effort contact log.

CMJ Construction, Inc. was contacted at the request of Lisa Umscheid, Metro Counsel, and asked if they had contacted the minority subcontractor listed on the pre-bid sign-in sheet prior to bid. CMJ Construction, Inc. provided a fax indicating they had contacted this minority subcontractor prior to bid. It should be noted that CMJ Construction, Inc. also provided a fax indicating the proposed scope of work to be performed by the subcontractor mentioned above would, in fact, be self-performed by CMJ Construction, Inc.

The Acting MERC General Manager and Metro Legal Counsel reviewed Pacific Coast Construction's protest, and determined that Pacific Coast Construction's protest does not appear to have merit.

Fiscal Impact: OCC Operations Remodel Phase I was approved and budgeted within the OCC Expansion Fund at \$360,000.00 for the construction, design, fees and associated costs. Funds are available to finance this work through both FY 02-03 and FY 03-04.

Recommendation: Staff recommends that the Metropolitan Exposition-Recreation Commission accept CMJ Construction, Inc. as the lowest responsive and responsible bidder and authorize the MERC General Manager to execute a contract with CMJ Construction, Inc. in the amount of \$299,347.00 for the Oregon Convention Center Operations Remodel (Phase I).

**SECTION 00500
CONSTRUCTION AGREEMENT**

Contract # 925101

This Construction Agreement is made by and between CMJ Construction, Inc. PO Box 68374, Portland, OR 97268, 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 Oregon Convention Center, Operations Remodel Phase I 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/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 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 \$299,347.00 (Two hundred ninety-nine thousand, three hundred forty-seven 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

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 upon execution of the contract by the last week in July. 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 August 31, 2003, final completion within (30) days. By executing this Construction Agreement, Contractor confirms and accepts that the Contract Time so stated is a reasonable period for performance of all of the Work.

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 700.

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 (CMJ Construction, Inc)

MERC

By: Clifford M. Johnson
Clifford M. Johnson

By: Mark B. Williams
Mark B. Williams

Title: owner

Title: GM

Date: 6-30-03

Date: 7/2/02

OCC Expansion

By: Karl S. Schulz
Karl S. Schulz

Title: Project Manager

Date: 7/2/03

END OF SECTION

PCPA MONTHLY ANALYSIS - MAY 2003													
FACILITY NAME	PRESENTER	EVENT	DAYS IN EVENT	TOTAL ATTEND.	PAID ATTEND.	% SOLD	RENT	CHARGES & REIMBURSE.	USER'S FEE	GROSS FOOD & BEV.	GROSS OPEN CATERING	GROSS REVENUE EARNED	
KELLER	Clear Channel	Lord of the Dance	2	4,731	4,554	51%	\$9,231	\$12,588	\$9,108	\$ 4,327.00		\$35,254	
	Clear Channel	Some Like It Hot	7	15,644	15,030	70%	\$17,085	\$32,945	\$30,060	\$18,853		\$98,943	
	WBEZ Radio	This American Life	1	2,872	2,302	76%	\$5,304	\$9,376	\$3,978	\$2,084	\$894	\$21,636	
ASCH	White Bird	Grupo Corpo - Revised	2	0	0	0%	\$0	\$1,289	\$0			\$1,289	
	Portland Youth Philharmonic	Spring Concert	1	1,898	935	39%	\$645	\$3,223	\$468	\$409		\$4,745	
	Standard Insurance Company	Employee Meeting	1	1,600	0	0%	\$1,000	\$2,353	\$0		\$10,025	\$13,378	
	Oregon Symphony	Pops #7 Broadway/Boule	5	7,867	6,688	60%	\$3,005	\$10,896	\$3,344	\$2,610		\$19,855	
	ISEPP	Freeman Dyson	1	2,456	371	13%	\$2,775	\$8,049	\$863	\$191		\$11,878	
	White Bird	Mark Morris Dance Group	2	2,232	2,127	77%	\$4,165	\$12,866	\$2,966	\$1,413		\$21,410	
	Oregon Symphony	Classical #14 Beethoven	5	8,156	7,512	90%	\$2,400	\$8,816	\$3,756	\$3,870		\$18,842	
	White Bird	Garth Fagan Dance	2	2,162	1,868	67%	\$4,165	\$12,095	\$2,568	\$1,421	\$798	\$21,047	
	Oregon Symphony	Symphony Sunday #5	3	2,353	1,608	57%	\$605	\$3,005	\$804	\$843		\$5,257	
	Portland Rose Festival	Queen's Coronation	2	1,331	758	27%	\$3,480	\$12,853	\$461	\$246		\$17,040	
NEWMARK	Portland Public Schools	Jefferson Dancers	7	3,326	2,571	59%	\$7,395	\$11,947	\$1,839	\$1,839		\$23,020	
	Do Jump Theatre	Do Jump	7	1,605	1,334	51%	\$2,745	\$11,102	\$1,968	\$617		\$16,432	
	The Northwest Academy	Esprit	1	218	158	41%	\$1,425	\$2,224	\$110	\$50		\$3,809	
	Arts & Commun. High School	Dance West	2	692	553	31%	\$1,900	\$4,737	\$450	\$518		\$7,605	
	Portland Youth Philharmonic	Matinee in May	1	631	221	24%	\$135	\$1,813	\$111	\$153		\$2,212	
WINNINGSTAD	Oregon Children's Theatre	Cyrano	23	3,020	2,625	45%	\$3,795	\$6,995	\$1,313	\$0		\$12,103	
BRUNISH HALL	Stancorp Financial Group	Meeting	1	70	0	0%	\$575	\$0	\$0		\$644	\$1,219	
	Portland Center Stage	Auditions	1	0	0	0%	\$255	\$0	\$0	\$0		\$255	
inOvations	PCPA		1								\$3,633	\$3,633	
	Swafford Reception		1	56							\$1,024	\$1,024	
	Jewish Federation		1								\$460	\$460	
	Sister City Guadalajara		1								\$984	\$984	
	Fruen		1								\$216	\$216	
	Opera		1								\$55	\$55	
	OPB		1								\$2,938	\$2,938	
	Backstage Café									4275		4275	
	Keller Café									8760		8760	
	TOTALS			84	62,864	51,215	42%	\$72,085	\$169,172	\$64,167	\$52,477	\$15,993	\$379,571

Monthly Event and Attendance Summary
July 1, 2001 - June 30, 2002

MONTH	KELLER		ASCH		NEWMARK		WINNINGSTAD		BRUNISH/LOBBY		TOTALS	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance
July	17	27,077	7	12,406	2	512	10	1,267	2	299	38	41,561
August	16	24,240	5	11,371	3	1,543	0	0	0	0	24	37,154
September	14	30,042	15	20,361	12	5,910	10	862	3	326	54	57,501
October	15	29,891	29	47,106	27	12,305	26	3,105	4	338	101	92,745
November	13	32,632	27	47,921	25	9,976	35	4,767	0	0	100	95,296
December	28	52,247	26	44,102	34	15,592	28	3,945	7	995	123	116,881
January	27	67,802	19	26,250	27	13,001	14	1,403	3	305	90	108,761
February	14	24,475	26	48,141	18	6,596	23	1,773	1	80	82	81,065
March	17	30,932	20	34,296	24	9,431	45	7,377	2	223	108	82,259
April	27	39,471	22	19,119	23	6,327	14	1,683	3	1,129	89	67,729
May	7	14,286	24	36,884	15	7,703	21	3,391	6	592	73	62,856
June												
Total to Date	195	373,095	220	347,957	210	88,896	226	29,573	31	4,287	882	843,808

Lobby includes Brunish Hall

Monthly Event and Attendance Summary
July 1, 2002 - June 30, 2003

Month	KELLER		ASCH		NEWMARK		WINNINGSTAD		BRUNISH/LOBBY		TOTALS	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance
July	27	70,048	7	7,742	20	4,389	9	1,201	2	238	65	83,618
August	1	2,685	3	6,503	2	761	2	319	9	1,935	17	12,203
September	8	14,488	16	20,848	11	4,717	4	404	1	35	40	40,492
October	18	27,165	35	46,553	28	11,911	0	0	1	46	82	85,675
November	19	37,512	32	43,411	21	8,529	23	3,088	1	100	96	92,640
December	27	57,481	25	36,676	28	16,541	23	2,950	5	742	108	114,390
January	22	49,736	22	26,246	21	7,686	2	188	4	743	71	84,599
February	16	40,953	22	34,384	23	7,877	21	3,028	0	0	82	86,242
March	14	23,779	22	39,088	22	9,416	31	3,669	5	369	94	76,321
April	18	47,521	25	40,658	24	12,811	3	418	2	1,130	72	102,538
May	18	38,381	16	24,193	21	10,547	28	4,789	3	320	86	78,230
June											0	0
Total to Date	188	409,749	225	326,302	221	95,185	146	20,054	33	5658	813	856,948

Change												
Events	-7	36,654	5	-21,655	11	6,289	-80	-9,519	2	1,371	-69	13,140
Percentage	-4%	10%	2%	-6%	5%	7%	-35%	-32%	6%	32%	-8%	2%