Meeting Date: 2/14/12

# **AGENDA REPORT**

City of Santa Clara, California





Date:

February 14, 2012

To:

**Executive Director for Stadium Authority Information** 

From:

Assistant City Manager

Subject:

Additional Information: Stadium Authority Agenda Item 4.B.1 Adoption of a Resolution approving a Design-Build Agreement with Turner/Devcon, a Joint Venture, and the Forty Niners Stadium, LLC for the construction of a professional football stadium and adoption of a Resolution approving a Construction Agency Agreement with the Forty Niners

Stadium, LLC for the administration and management of stadium construction.

Attached is a letter from the 49ers regarding the proposed Design-Build Agreement. This letter provides additional background on the selection of the contractor that the Stadium Authority Board may find helpful.

Alan Kurotori

Assistant City Manager

APPROVED:

Jennifer Sparacino

City Manager

Documents Related to this Report: Letter dated February 8, 2014 regarding Design-Build Agreement

POST MEETING MATERIAL

## February 8, 2012

Jennifer Sparacino Executive Director Santa Clara Stadium Authority 1500 Warburton Ave Santa Clara, CA 95050

Re: Design-Build Agreement

Ms. Sparacino:

Enclosed are three originals of the proposed Design-Build Agreement, which have been executed by Turner/Devcon Joint Venture ("TDJV") as Design-Builder and by Forty Niners Stadium LLC ("Stadco") as Construction Agent. The enclosed agreement is based on the form attached to the DDA, but has been updated, including to reflect business terms that were left blank in the form attached to the DDA. For your convenience, a "redline" showing changes from the form attached to the DDA is also enclosed.

As you know, in anticipation of the award of this contract and the commencement of construction, TDJV has begun the process of selecting subcontractors, and, to maintain scheduled progress on the final design-build scopes of work, will soon begin the formal award of subcontracts. For that reason, Stadco and TDJV request that the Stadium Authority Board approve the Authority's entry into the Design-Build Agreement in accordance with the provisions of California Government Code Section 6532.

The balance of this letter summarizes how Stadco selected TDJV as the recommended Design-Builder, why the cost that will be incurred under the contract is reasonable, and why the award of this Agreement to TDJV is in the best interests of the Stadium Authority and the Stadium project.

#### The Design-Builder and Architect Selection Process

The process began in 2005, even before the Santa Clara site had been selected as the preferred location for a new Stadium. After talking with a number of candidates, Stadco selected Jeffrey Appelbaum of Project Management Consultants in Cleveland to be its lead construction attorney for the project. Mr. Appelbaum, who has long practiced in the field of contracting law as it relates to stadium and arena projects, is also a partner in the Cleveland law firm of Thompson Hine, LLP. He is well respected in the

Jennifer Sparacino February 8, 2012 Page 2

field by owners, architects and contractors and typically represents owners. Mr. Appelbaum is a well-known and widely respected expert on the Design-Build contracting process. During 2005, Stadco worked with Mr. Appelbaum to create a Design-Build construction contract form and a design architect contract form that would fairly balance the risks of all parties while seeking to minimize the owner's design and contracting risks; all without limiting competition within the stadium construction sector. In other words, Stadco desired to create a contract that would optimize the owner's control of the process and minimize the owner's risk without diminishing the desirability of the project within the stadium design and construction community.

In 2006, after much discussion with various contractors and architects with extensive expertise in stadiums and arenas, Stadco set out to select an architect and a Design-Build contractor to design and construct a new football stadium in the San Francisco Bay Area. The concept of using the Design-Build process was discussed indepth with numerous individuals having extensive experience in stadium construction, and these discussions were used as a guide to the selection process used by Stadco. The selection process was designed to maximize the desirability of the project within the stadium design and construction community and to create competition among those firms qualified to work on the project.

Two (2) contractors were pre-qualified as having the most experienced stadium personnel in the country. Identical RFP's were given to the firms, containing a project description, a description of the anticipated project delivery system including a form of contract, a description of the anticipated architect selection and design process, a description of the scope of services required, a description of the anticipated project phasing as well as a project schedule and budget breakdown, a description of the criteria for selection, and a description of the required RFP deliverables as well as other relevant information. Stadco simultaneously engaged in a similar competitive RFP process for selection of the Design-Architect.

RFP responses were reviewed and compared, formal presentations were made and, by April, 2006, selections for both the Design-Builder and architect had been made on the basis of the competitive proposals provided by the respondents. HNTB was selected as the architect and TDJV was selected as the Design-Build contractor. Since that time, HNTB has been providing design services, and TDJV has been providing preconstruction services, under separate agreements with Stadco. As part of its preconstruction services, TDJV has been providing continuous input on the evolution of the design, especially in regards to constructability and cost. TDJV has developed and maintained a detailed cost estimate, based on its careful review of the evolving design documents, its experience in developing stadia, and input from the subcontracting community. This cost estimate was comprehensively updated after completion of the

Jennifer Sparacino February 8, 2012 Page 3

Schematic Design, and then again during Design Development. Once the GMP is established under the Design-Build Agreement, HNTB will complete the design work under the Design-Build Agreement, as the architect-of-record and a consultant to TDJV.

### The Cost To Be Paid Under the Design-Build Agreement Is Reasonable

Amounts due to the Design-Builder under the Design-Build Agreement will be determined on the basis of the actual cost incurred, plus a fee, all subject to a Guaranteed Maximum Price or GMP. The "open book" approach provided under the Agreement is commonly used in the construction of stadia and other major projects, and assures that the cost incurred by the Stadium Authority will be reasonable and verifiable.

The amounts due the Design-Builder under the Agreement will be determined each month, and in total at the completion of the project, based on the actual "Cost of the Work" incurred by the Design-Builder. Section 8.3 of the Design-Build Agreement contains a carefully drafted provision to assure that only costs properly charged to the project are included in the Cost of the Work. The Stadium Authority will have the right to independently audit the Design-Builder's books and records to verify the Cost of the Work. Of course, the majority of those costs will be amounts due to subcontractors, all of whom will have been selected through a competitive process, consistent with the Stadium Authority's Subcontractor Procurement Guidelines.

In addition, TDJV will be entitled to a fee equal to 4% of the Cost of the Work. The amount of this fee was determined through the competitive selection process described above, and was the lowest of the fees proposed by the RFP respondents. The amount of this fee is well within the range of fees the project team has seen in other projects of this type, schedule duration and contract structure.

The amounts due to the Design-Builder under the Agreement will be subject to a Guaranteed Maximum Price or GMP to be agreed as subcontractor bidding progresses. The GMP will be subject to adjustment under certain circumstances, as described in the Agreement, including on account of changes in the scope of the work. The Design-Builder will not be entitled to any payments in excess of the GMP, even if Costs of the Work are higher than the Design-Builder anticipates. An Initial Guaranteed Maximum Price or IGMP will be determined prior to the Close of Escrow. Until that time the Stadium Authority has <u>no</u> liability for amounts due the Design-Builder under this Agreement.

The Agreement establishes a Construction Cost Limitation of \$878 Million, which includes Tenant Improvements for which Stadco is responsible in the estimated amount

Jennifer Sparacino February 8, 2012 Page 4

of \$125 Million. The Construction Cost Limitation, which is based on the detailed cost estimates that have been prepared to date, constitutes the fixed limit of Construction Cost and neither the IGMP nor the GMP can exceed this amount.

For all of the reasons stated above, the Stadium Authority can be assured that amounts to be paid to the Design-Builder under the Agreement are reasonable.

#### Approval of this Agreement is in the best interests of the Stadium Authority

The relationship among City and Stadium Authority staff, Stadco, HNTB and TDJV has been healthy, collaborative and constructive. The quality of work that has been done to date is high and Stadco's understanding of the design, as well as our confidence in the preconstruction work and cost estimates prepared by TDJV, is equally high.

The design and contracting method, and the specific Architect and the Design-Builder, were all selected through thoughtful, deliberate, professional methods. The resulting Design-Build team, which has provided the Stadium design and performed pre-construction services, is well qualified, and best able, to manage the development of the Stadium going forward. The final terms and conditions of the Design Build Agreement were based on arms-length negotiations, with important input from the SCSA's staff and attorneys. The Procurement Guidelines assure a competitive process in the award of subcontracts that will account for the majority of the Costs of the Work. As noted above, Stadco will be responsible for payments to the Design-Builder due under this Agreement until the Close of Escrow.

We urge the Stadium Authority to approve the award of the Design-Build Agreement, marking another important milestone towards the successful completion of the Stadium Project.

Very truly yours,

Jack Hill

cc: Alan Kurotori