

THIS PRINT COVERS CALENDAR ITEM NO.: 10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs and Construction

BRIEF DESCRIPTION:

Authorize the Director of Transportation to execute San Francisco Municipal Transportation Agency Contract No. 1322, Job Order Contract for Federally Funded Projects with NTK Construction, Inc., to perform minor construction and maintenance work for a contract amount not to exceed \$5,000,000, and contract term not to exceed five years.

SUMMARY:

- The SFMTA has developed a Job Order Contracting (JOC) program for the purpose of performing minor construction and maintenance work in an efficient and expeditious manner.
- On November 9, 2022, the Director of Transportation notified the SFMTA Board of Directors that he had authorized a bid call for JOC Contract Nos. 1322 and 1323, for federally funded projects with the same scope of work in order to establish two separate contracts to perform routine and minor construction services.
- On November 10, 2022, the SFMTA advertised both contracts under the same Invitation for Bids and, on December 15, 2022, received five bids. NTK Construction, Inc. was determined to be the eligible and responsible bidder to have submitted the lowest responsive bid for one of the two contracts.
- This SFMTA Contract No. 1322, Job Order Contract for Federally Funded Projects (Contract) will be funded from federal sources for both operating and capital projects. Each individual project performed under the Contract will identify specific funding sources in their respective budget for the work.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR	 _____	<u>February 14, 2023</u>
SECRETARY	 _____	<u>February 14, 2023</u>

ASSIGNED SFMTAB CALENDAR DATE: February 21, 2023

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PURPOSE

Authorize the Director of Transportation to execute San Francisco Municipal Transportation Agency Contract No. 1322, Job Order Contract for Federally Funded Projects with NTK Construction, Inc., to perform minor construction and maintenance work for a contract amount not to exceed \$5,000,000, and contract term not to exceed five years.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

The Contract would assist in the implementation of the following SFMTA Strategic Plan Goals:

Goal 4: Make streets safer for everyone.

Goal 5: Deliver reliable and equitable transportation services.

Goal 8: Deliver projects on-time and on-budget.

The Contract would assist in the implementation of the following Transit First Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety.
4. Transit priority improvements, such as designated transit lanes and streets and improved signalization, shall be made to expedite the movement of public transit vehicles (including taxis and vanpools) and to improve pedestrian safety.
5. Pedestrian areas shall be enhanced wherever possible to improve the safety and comfort of pedestrians and to encourage travel by foot.
6. Bicycling shall be promoted by encouraging safe streets for riding, convenient access to transit, bicycle lanes, and secure bicycle parking.
7. Parking policies for areas well served by public transit shall be designed to encourage travel by public transit and alternative transportation.
8. New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments.
9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.

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10. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

DESCRIPTION

JOC Program

Public agencies like the SFMTA use the JOC project delivery method to complete large numbers of small projects on an as-needed basis, under a single contract, and with pre-selected contractors. JOC contracts are for an indefinite-quantity of construction services that JOC contractors perform under individual task orders during a fixed contract term and for a maximum contract value. As authorized under Section 6.62 of the San Francisco Administrative Code, the SFMTA developed its JOC Program to perform maintenance, repair, and minor construction work in an efficient and expeditious manner.

Under its JOC Program, the SFMTA competitively advertises each contract. Construction contractors bid on detailed specifications and unit prices based on the construction tasks the SFMTA expects to complete under the contracts. Unit prices are fixed and include direct costs for material, equipment, and labor, and are grouped by trade.

Contractors include in their competitive bids percentage-based adjustment factors that either increase or decrease unit prices for all construction tasks set forth in the bid documents for different work hours. The adjustment factors cover a contractor's profit, overhead, and indirect costs to perform task orders.

By utilizing the JOC project delivery method for small projects, the SFMTA eliminates the time and expense of completing the typical design-bid-construct cycle for each project. This allows the SFMTA to reduce project duration and cost.

Between February 19, 2019 and December 1, 2022, the SFMTA utilized its JOC program to complete a number of critical projects, including the following:

- overhead contact system (OCS) retrofit from Civic Center to West Portal
- Twin Peaks Tunnel ballast maintenance work
- Twin Peaks Tunnel – cold joint bars
- profiling of tunnel trackwork assembly and track fastener replacement at Castro Curve
- subway tangent rail and track fastener replacement at Van Ness Tangent.

Scope of Work and Pricing

The scope of work for each task order is developed as-needed on a project-by-project basis. Upon identifying the need for a project, the SFMTA and the Contractor hold a joint scoping meeting to define the project's scope of work and calculate quantities of work. The price for each project equals

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the sum of the project’s quantities of work multiplied by their corresponding pre-set unit prices and multiplied by their corresponding, competitively bid adjustment factors. The SFMTA issues a separate task order for each project after the scope of work and price are established.

Bidding and Award Process

SFMTA Board Resolution No. 09-191 delegates to the Director of Transportation authority to issue bid calls. On November 9, 2022, the Director of Transportation notified the SFMTA Board of Directors he had authorized a bid call for Contract Nos. 1322 and 1323.

On November 10, 2022, the SFMTA advertised the bid calls, in response to which, on December 15, 2022, the SFMTA received and publicly opened five bids for Contract No. 1322, each listed below with its corresponding award criteria factor (ACF). For each bidder, the ACF is the weighted average of their adjustment factors for different work hours in the schedule of bid prices.

Bidder Name	Award Criteria Factor (ACF)
1. NTK CONSTRUCTION, INC. 501 Cesar Chavez Street, Suite 115, San Francisco, CA 94124	1.2990
2. PHOENIX ELECTRIC COMPANY 1350 Van Dyke Ave., San Francisco, CA 94124	1.2990
3. GROUND CONTROL, INC. 1485 Bayshore Blvd., Suite 451, San Francisco, CA 94124	1.2330
4. RODAN BUILDERS INC. 3486 Investment Blvd., Suite B, Hayward, CA 94545	1.2680
5. MITCHELL ENGINEERING 1395 Evans Avenue, San Francisco, CA 94124	1.2000

Under San Francisco Administrative Code Section 6.62(a), the SFMTA must award Contract No. 1322, if at all, to the responsible bidder that submits the lowest responsive bid. For evaluation and selection purposes the SFMTA interprets the lowest responsive bid as the responsive bid with the lowest ACF.

After reviewing the five bids, staff determined the bids submitted by the bidders with the three lowest ACF’s were each non-responsive to certain requirements in the bid calls.

The bid submitted by Ground Control, Inc. contained a contradictory Buy America certificate, which indicated the bidder both complied and did not comply with the federal government’s Buy America requirements. Under federal regulations, this type of error renders a bid non-responsive.

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The bids submitted by Mitchell Engineering and Rodan Builders, Inc. both failed to meet the SFMTA's small business enterprise (SBE) / disadvantaged business enterprise (DBE) participation goals for the Contract and failed to demonstrate sufficient good faith efforts to meet such goals. Under Appendix 4-B, the SFMTA's SBE/DBE Program Insert, Section III.A, this makes a bid non-responsive.

Accordingly, only NTK Construction, Inc. ("NTK") and Phoenix Electric Company ("PEC") submitted responsive bids, each with same ACF of 1.2990. And, since the SFMTA has two contracts for federally funded projects (i.e., 1322-JOC16 and 1323-JOC 17) for potential award, staff recommends awarding one each to NTK and PEC. Of the two contracts, staff recommends award of Contract No. 1322 to NTK because the contract is sequentially numbered ahead of Contract No. 1323 and NTK submitted their bid before PEC.

The Contract Compliance Office reviewed the bid proposals and confirmed that NTK has made a commitment to meet the SBE participation goal of 15 percent, and the combined Black-owned and/or Woman-Owned DBE participation goal of 10 percent established for this contract and the non-discrimination equal employment requirements of the contract. Additionally, NTK Construction, Inc. is in compliance with Chapter 12B of the San Francisco Administrative Code.

Subcontractors

Bidders are required by the California Subletting and Subcontracting Fair Practices Act (California Public Contract Code section 4104) to list all subcontractors that will perform more than one-half of one percent of the value of the Contract. NTK Construction, Inc. listed the following subcontractors:

Subcontractor	Scope	Status	Value
1. On the Level Concrete	Concrete	DBE – Black-Owned	\$250,000
2. Bay Tech Engineering, Inc.	Electrical (partial)	LBE, SBE, DBE	\$700,000
3. Alta Engineering Group, Inc.	Rebar, structure & Misc. Steel and Civil(partial)	DBE – Women-owned	\$250,000
4. Pioneer Contractors, Inc.	Roofing (partial)	LBE	\$5,000
5. Reliance Engineering Inc.	Electrical (partial)	LBE, DBE	\$50,000

Safety Record of Contractor

To be eligible to submit a bid for this Contract, all bidders were required to submit a safety prequalification form, with supporting documents, at least ten days before the bid date. Prior to the bid date, the SFMTA received the safety prequalification forms from eight potential bidders. The

SFMTA's independent safety consultant evaluated the bidders' safety prequalification forms and prequalified all eight potential bidders of which five potential bidders submitted its bids.

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Transit impacts

At this time, staff does not anticipate any impact to transit operations due to work assigned with task orders under this contract. If a future task order contains scope that may impact operations, staff will work with the SFMTA'S Transit Division to mitigate those impacts and/or to schedule for them with least disturbance to the public.

STAKEHOLDER ENGAGEMENT

The SFMTA will perform internal and external stakeholder engagement as it issues task orders under the contract. The level of stakeholder engagement will depend on and be commensurate with the scope of work for each task order.

ALTERNATIVES CONSIDERED

The alternative to a JOC contract would be to bid each individual project separately. For smaller projects, the administrative costs of preparing bid documents and conducting a procurement process would be prohibitively expensive. The JOC method of contracting has been proven to be an effective and efficient method of completing smaller construction projects.

FUNDING IMPACT

The total not to exceed amount for the Contract is \$5,000,000. Federal funds required for operations and maintenance are budgeted in the SFMTA current and subsequent year budget. Each individual project will identify the funding in the respective project budget for this work.

ENVIRONMENTAL REVIEW

On December 28, 2022, the SFMTA, under authority delegated by the Planning Department, determined that Job Order Contract No. 1322 is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are required for this Contract.

The City Attorney's office has reviewed this Calendar Item.

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RECOMMENDATION

Staff recommends that the Board of Directors authorize the Director of Transportation to execute San Francisco Municipal Transportation Agency Contract No. 1322, Job Order Contract for Federally Funded Projects with NTK Construction, Inc., to perform minor construction and maintenance work for a contract amount not to exceed \$5,000,000, and contract term not to exceed five years.

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1322, Job Order Contract, is an indefinite quantity contract with a predefined set of bid items that are assigned on an as-needed, task order basis for the performance of public work maintenance, repair, and minor construction projects; and,

WHEREAS, On November 9, 2022, the Director of Transportation notified the SFMTA Board of Directors that he had authorized a bid call for Contract No. 1322 in accordance with Board Resolution No. 09-191, which delegates, among other things, the authority to issue bid calls to the Director of Transportation; and,

WHEREAS, On November 10, 2022, the SFMTA advertised the bid call for Contract No.1322; and,

WHEREAS, On December 15, 2022, the SFMTA received and publicly opened five bid proposals in response to its invitation for bids; and,

WHEREAS, After reviewing the bid proposals, the SFMTA determined NTK Construction, Inc (NTK) and Phoenix Electric Company (PEC) were the two eligible and responsible bidders that submitted the lowest responsive bids; with an award criteria figure of 1.2990 and,

WHEREAS, Since the SFMTA has two job order contracts for federally funded projects (i.e., Contract Nos. 1322 and 1323) for potential award, staff recommends awarding one contract each to NTK and PEC; and,

WHEREAS, The work under this job order contract will be performed under future task orders, which will identify the scope of work, cost, and duration of various discrete projects; and,

WHEREAS, On December 28, 2022, the SFMTA, under authority delegated by the Planning Department, determined that Job Order Contract No. 1322 is not a “project” under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; and,

WHEREAS, Any task order/project delivered under Contract No. 1322 that would result in a direct or indirect physical change to the environment will undergo environmental review before approval; and,

WHEREAS, The SFMTA Contract Compliance Office reviewed the bid proposals and confirmed that NTK is committed to meet the small business enterprise (SBE) participation goal of 15%, and the combined Black-Owned and/or Woman-Owned disadvantaged business enterprise (DBE) participation goal of 10% established for this Contract No. 1322; and is committed to meet the non-discrimination equal employment requirements of the contract; and,

WHEREAS, This Contract No. 1322 will be funded from federal sources for both operating and capital projects; each individual project will need to identify the funding in their respective budget for this work; and

WHEREAS, This Contract No. 1322 will assist the SFMTA in meeting the following objectives of Strategic Plan: Goal 4: Make streets safer for everyone; Goal 5: Deliver reliable and equitable transportation services; and Goal 8: Deliver projects on-time and on-budget; now, therefore, be it

RESOLVED, That the SFMTA the Board of Directors authorizes the Director of Transportation to execute San Francisco Municipal Transportation Agency Contract No. 1322, Job Order Contract for Federally Funded Projects with NTK Construction, Inc., to perform minor construction and maintenance work for a contract amount not to exceed \$5,000,000, and contract term not to exceed five years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of February 21, 2023.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

AGREEMENT

This AGREEMENT, made this _____ day of _____, 20____, by and between NTK Construction, Inc., whose place of business is at 501 Cesar Chavez Street, Suite 115, San Francisco, CA 94124, (the Contractor), and the City and County of San Francisco, a municipal corporation (the City) by and through its Municipal Transportation Agency (the Agency or SFMTA), acting under and by virtue of the authority vested in the Agency by the City's Charter and by ordinances enacted pursuant to said Charter.

WHEREAS, the Agency, by Resolution No. _____, adopted on the _____ day of _____, 20____ (a copy of which is attached hereto and made a part of this Agreement), awarded to the Contractor the contract for

SFMTA Contract No. 1322,

Job Order Contract for Federally Funded Projects - JOC16

Now, therefore, the Parties agree as follows:

The Contractor will perform the Work in accordance with the Specifications as defined in the Task Orders for the prices set out in the SimpleBid™ Unit Price Book as modified by the following adjustment factors:

Normal Working Hours: Undersigned shall perform any or all Work called for during Normal Working Hours in the quantities specified in individual Task Orders for this Contract for the Unit Price stated in the SimpleBid™ multiplied by the Adjustment Factor of: 1.2500

Other than Normal Working Hours: Undersigned shall perform any or all Work called for during Other than Normal Working Hours in the quantities specified in individual Task Orders for this Contract for the Unit Price stated in the SimpleBid™ multiplied by the Adjustment Factor of: 1.3000

Rail Line Normal Working Hours: Undersigned shall perform any or all Work called for during Rail Line Normal Working Hours, in locations on SFMTA Rail Lines, in the quantities specified in individual Task Orders for this Contract for the Unit Price stated in the SimpleBid™ multiplied by the Adjustment Factor of: 1.3000

Rail Line Other than Normal Working Hours: Undersigned shall perform any or all Work called for during Rail Line Other than Normal Working Hours, in locations on SFMTA Rail Lines, in the quantities specified in individual Task Orders for this Contract for the Unit Price

stated in the SimpleBid™ multiplied by the Adjustment Factor of: 1.3000

Short Shift Hours: Undersigned shall perform any or all Work called for during Short Shift Hours in the quantities specified in individual Task Orders for this Contract for the Unit Price stated in the SimpleBid™ multiplied by the Adjustment Factor of: 1.3700

NOW, THEREFORE, the Contractor for and in consideration of payment to be made as hereinafter mentioned, promises and agrees with the Agency to perform said Work in a good and workmanlike manner, under the direction (to the extent of ascertaining whether said Work is being performed in accordance with approved Task Order Plans and Specifications) and to the satisfaction of the Agency and to Furnish all labor, Material and equipment necessary for use in the performance thereof, all in accordance with the Contract Documents, all of which documents are by reference made a part of this Agreement as if all requirements and provisions therein contained were specifically set forth herein.

Said Work shall be commenced as soon as practicable after execution of Task Orders, prosecuted diligently thereafter and completed within the time limits fixed in the Task Order.

And the Agency promises and agrees that upon performance and fulfillment of the covenants aforesaid, it will pay to the Contractor for said Work, in the manner provided by law and in said Specifications, the price or prices fixed in the Contractor's Proposal for said Work set forth in the resolution herein above stated.

Time is of the essence in this contract.

It is understood and agreed that in no instance is any Party signing this Agreement for or on behalf of the City and County of San Francisco or acting as a member of the San Francisco Municipal Transportation Agency liable on this contract, or upon any warranty of authority, or otherwise, and it is further understood and agreed that the liability of said City and County is limited and confined to such liability as authorized or imposed by law.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY	CONTRACTOR
<p>_____</p> <p>Jeffrey P. Tumlin Director of Transportation San Francisco Municipal Transportation Agency</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No.: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Christine Silva Secretary of the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ Isidro Alarcón Jiménez Deputy City Attorney</p>	<p>NTK Construction Inc.</p> <p>_____</p> <p>Tin Tran President</p> <p>City Supplier Number: 0000003177</p>