

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL CORRESPONDENCE
CITY MANAGER'S OFFICE**

TO: Mayor and City Council

FROM: Roland A. Lozano, Assistant to the City Manager

THROUGH: Terry M. Brechtel, City Manager

COPIES: Jelynn LeBlanc Burley, Assistant City Manager; Milo Nitschke, Director, Finance Department; Marc Kimball, Acting Assistant City Architect, City Architect's Office

RE: Convention Center Expansion Project – Phase 1B Dispute Resolution

DATE: September 25, 2003

SUMMARY & RECOMMENDATIONS

This Ordinance authorizes a no cost change order to the Construction Contract between the City of San Antonio and Clark/JT Construction, a Joint Venture (Clark) for the construction of the City of San Antonio, Henry B. Gonzalez Convention Center Expansion Project, Phase 1B, and amends the Review and Resolution of Claims and Disputes Provision of the Contract to release the parties from these requirements, and to instead impose mediation and binding arbitration as an alternative resolution process, solely for the Todd-Ford Dispute between the City and Clark.

Staff recommends approval of this Ordinance.

BACKGROUND INFORMATION

The City of San Antonio and Clark/JT Construction, a Joint Venture (Clark) entered into a Construction Agreement dated May 8, 1997 for work for the Henry B. Gonzalez Convention Center Expansion Project, Phase 1B – New Construction and Renovation (the "Project").

The project work has been completed and the City and Clark are currently involved in the dispute resolution process for a change order submitted by Clark. This change order is for compensation for alleged inefficiencies associated with extra work performed by Clark during the construction process for and on behalf of its subcontractors, Todd-Ford, Inc. and Lewis & Lambert.

The Agreement entered into between the City and Clark provides for a Dispute Resolution Process. This process requires the parties to attempt to resolve these issues by participation in a hearing before a Dispute Review Board ("DRB"), comprised of three (3) individuals—one selected by the City, one by Clark and a third neutral party selected by the City and Clark. This

process has been very successful in resolving all change orders to date for this contract. At this time, only two issues remain unresolved between the City and Clark.

This ordinance authorizes a change order to that Agreement allowing the parties to proceed directly to mediation, and in the event that mediation is unsuccessful, to submit this issue to binding arbitration. This change order is only relevant to the Agreement referenced herein, and amends the dispute resolution process only with regards to the Todd-Ford, Lewis & Lambert claim made by Clark and does not alter the process for any other invoices presented, subcontractors for this project, or for any previous change orders filed by Clark.

The proposed Mediation approved by this ordinance will involve the employment of a neutral third party educated in the subject of the dispute to facilitate discussions between the City and Clark with a view to persuading the parties to adjust or narrow the gap between the amount of recovery sought by Clark and the City's position of no liability thereby facilitating settlement of the Claim without the need for arbitration.

The proposed arbitration approved by this ordinance will only be utilized if mediation does not result in a resolution of the claim and would involve a panel of three arbitrators, equally funded by the City, Clark and Todd-Ford. The panel would conduct the arbitration hearing utilizing the Construction Industry Disputes Resolution Procedures (January 1, 2003) of the American Arbitration Association.

POLICY ANALYSIS

Approval of this Ordinance will enable the City to reach a timely and cost effective settlement of the dispute with Clark through mediation or binding arbitration.

FISCAL IMPACT


This amendment is a "no cost" change order to the terms and conditions of the Agreement between the City of San Antonio and Clark/JT Construction, Inc., a Joint Venture which does not increase the overall project budget, and does not impact the General Fund.

SUPPLEMENTARY COMMENTS

This construction contract was developed utilizing the formal competitive bid process; therefore, a Discretionary Contracts Disclosure Form is not required.

COORDINATION

This action was coordinated with the City Attorney's Office, and the Finance Department.



Roland A. Lozano
Assistant to the City Manager

APPROVED:



Terry M. Brechtel
City Manager