



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Ryan Russo
Director, Oakland
Department of
Transportation

SUBJECT: 2022 As-Needed Pavement
Rehabilitation Services

DATE: December 21, 2021

City Administrator Approval 

Date: Jan 6, 2022

RECOMMENDATION

Staff Recommends That The City Council Adopt The Following:

- 1. A Resolution Waiving Further Advertising, Competitive Bidding, And The City's Small-Very Small Local Business Enterprise Participation Requirement And Authorizing The City Administrator To Negotiate And Award Construction Contracts To 1) Gallagher & Burk 2) McGuire & Hester And 3) O.C. Jones & Sons Provided That All Meet The Contractor's Bid Schedule Of The Lowest Responsible Bid Of Gallagher & Burk, For As-Needed Pavement Rehabilitation Services (Project Number 1006103) In Accordance With The Project Plans And Specifications And The Lowest Responsible Bidder In Accordance With Contractor's Bid In An Amount Not To Exceed Thirteen Million, Six Hundred Fifty-Seven Thousand, Five Hundred Dollars (\$13,657,500.00) Each, Without Return to Council, And 4) Adopting Appropriate California Environmental Quality Act (CEQA) Findings, And**
- 2. A Resolution Waiving Further Advertising, Competitive Bidding, And The City's Small-Very Small Local Business Enterprise Participation Requirement And Authorizing The City Administrator To Negotiate And Award A Construction Contract For As-Needed Pavement Rehabilitation Services (Project 1006104) to Gallagher & Burk, The Lowest Responsible Bidder, In Accordance With The Project Plans And Specifications And Contractor's Bid In An Amount Not To Exceed Thirteen Million, Six Hundred Fifty-Seven Thousand, Five Hundred Dollars (\$13,657,500.00), Without Return to Council, And Adopting Appropriate California Environmental Quality Act (CEQA) Findings, And**
- 3. A Resolution Waiving Further Advertising, Competitive Bidding, And The City's Small-Very Small Local Business Enterprise Participation Requirement And Authorizing The City Administrator To Negotiate And Award A Construction Contract For As-Needed Pavement Rehabilitation Services (Project 1006105) To Gallagher & Burk, The Lowest Responsible Bidder, In Accordance With The**

City Council
January 18, 2022

Project Plans And Specifications And Contractor's Bid In An Amount Not To Exceed Five Million, Seventy-Two Thousand, Five Hundred And Thirty Dollars (\$5,072,530.00), Without Return to Council, And Adopting Appropriate California Environmental Quality Act (CEQA) Findings.

EXECUTIVE SUMMARY

Approval of these proposed resolutions will authorize the City Administrator to negotiate and execute construction contracts with Gallagher & Burk, McGuire & Hester, and O.C. Jones & Sons, in the amount of \$13,657,500.00 each for As-Needed Pavement Rehabilitation Services (Project 1006103). Contract award is stipulated on each contractor matching the lowest responsible bid (Gallagher & Burk), without return to Council. In addition, these proposed resolutions would authorize the City Administrator to negotiate and if such negotiations are successful, award construction contracts to Gallagher & Burk, the lowest responsible bidder, in the amount of \$13,657,500.00 and \$5,072,530.00 for Projects 1006104 and 1006105 respectively, without return to Council. This contract capacity would enable the completion of the 2019 3-Year Paving Plan in Spring 2022 and implementation of the 2022 5-Year Paving Plan beginning in Summer 2022. No bidder achieved 25% participation from Small/Very Small Local Business Enterprises (S/VSLBE) and all were therefore deemed non-responsive.

BACKGROUND/LEGISLATIVE HISTORY

On December 21, 2021, City Council approved the 5YP (Resolution No. 88975 C.M.S.), which identified 350+ miles of pavement rehabilitation and preventative maintenance citywide to be completed within five years. In June 2021, City Council approved the Fiscal Year (FY) 2021-22 Capital Improvement Plan (CIP). The CIP funded the paving program at \$57.5M per year using Measure KK General Obligation Bond funds. Measure KK was approved by the voters of Oakland in November 2016 to fund \$600M of vital infrastructure maintenance improvements, including \$350M for streets and sidewalks.

For the past three years, the City of Oakland has implemented its paving projects primarily using as-needed pavement rehabilitation contracts. As-needed contracts lock in unit pricing for multiple projects, and projects are assigned on a work order basis. This is helpful, as staff can estimate exactly how much a particular project will cost, versus going to open market where costs may be higher than estimated. As-needed contracts also reduce peaks and valleys in design staff output. Rather than loading a year's worth of paving plans into 6 months out of the year, paving can occur throughout the calendar year. Additionally, as-needed contracts allow for more flexible construction schedules and enable the City to take advantage of various opportunities that are difficult to plan for, such as utility coordination.

In May 2021, through Ordinance 13647 C.M.S., City Council enacted changes to the Local and Small Local Business Enterprise Program(L/SLBE) requirements. Among these changes was an adjustment to how Local Produced Goods are counted toward a bidder's local business participation and related bid discounts. Previously, Local Produced Goods was counted as S/VSLBE participation; now it is counted toward Local Business Enterprise (LBE) participation. Failure to meet the local participation thresholds as detailed in the L/SLBE requirements can result in a bid being deemed non-responsive.

ANALYSIS / POLICY ALTERNATIVES

The proposed policy action would be to award multiple construction contracts to perform pavement rehabilitation and preventative maintenance, contributing to the Citywide priority of vibrant, sustainable infrastructure.

On September 30, 2021, City received 10 bids as part of three as-needed paving projects. The first (Project 1006103) received three bids from Gallagher & Burk, McGuire & Hester, and O.C. Jones & Sons in the amounts of \$13,657,500; \$13,802,960; and \$15,058,775 respectively. The engineer's estimate was \$13,486,600. The lowest responsible bid (Gallagher & Burk, \$13,657,500) was 1.27% over engineer's estimate.

The second (Project 1006104) received three bids from Gallagher & Burk, McGuire & Hester, and O.C. Jones & Sons in the amounts of \$13,657,500; \$13,802,960; and \$15,058,775 respectively. The engineer's estimate was \$13,486,600. The lowest responsible bid (Gallagher & Burk, \$13,657,500) was 1.27% over engineer's estimate.

The third (Project 1006105) received four bids from Gallagher & Burk, McGuire & Hester, O.C. Jones & Sons, and Teichert Construction in the amounts of \$5,234,525; \$5,269,205; \$5,695,775, and \$5,303,700 respectively. The engineer's estimate was \$5,072,530. The lowest responsible bid (Gallagher & Burk, \$5,234,525) was 3.2% over engineer's estimate.

The Department of Workplace and Employment Standards (DWES) provides analysis of all formal construction bids to review compliance with City policies and award bid discounts for local business enterprise participation. DWES analysis identified that none of the ten bids on the three projects qualified for bid discounts for local participation and are therefore each non-responsive bids. To receive a bid discount for local participation, the bid must achieve 50% LBE/SLBE participation through a combination of at least 25% LBE and at least 25% S/VSLBE participation, and 50% LBE/SLBE trucking participation. All bids achieved the 25% LBE and 50% LBE/SLBE trucking participation, but no bids met the 25% S/VSLBE participation.

Asphalt material supply is typically a significant component of paving bids, comprising an average of 25% of the total bid. In all ten recent bids, each bidder identified the same asphalt supplier (an Oakland business, making it a Local Produced Good) in their Schedule R (Subcontractor, Supplier, and Trucking Listing). Under the City's rules prior to May 2021, the dollar amount estimated for asphalt material supply in the bid would have been applied to the percentage participation within the S/VLSBE category. Updates in May 2021 adjusted the definition of Local Produced Goods; now Local Produced Goods are counted toward LBE and not S/VSLBE participation.

Bidders are incentivized to include local participation through bid discounts. If bidders achieve the 25% LBE and 25% S/VSLBE participation, they receive bid discounts ranging from 2% to 10%.

As demonstrated in **Table 1**, each bid far exceeded the LBE requirement of 25% participation but falls short of the S/VSLBE participation (also 25%). Therefore, no bidder received bid discounts and per DWES analysis, each are non-responsive bids. The table below reflects a summary of the full compliance analysis provided by DWES which is provided in **Attachment A**.

Table 1: Summary of Local Participation in Bids for Projects 1006103, 1006104, and 1006105

Project	Bidder	Bid	Total LBE/SLBE Participation	LBE/Local Produced Goods	S/VSLBE Participation	LBE Trucking
		Goal		25.00%	25.00%	50%
1006103	Gallagher & Burk	\$13,657,500	83.05%	60.74%	22.31%	81%
1006103	McGuire & Hester	\$13,802,960	76.91%	63.41%	13.49%	52%
1006103	O.C Jones & Sons	\$15,058,775	70.75%	56.26%	14.48%	100%
1006104	Gallagher & Burk	\$13,657,500	83.05%	60.74%	22.31%	81%
1006104	McGuire & Hester	\$13,802,960	76.91%	63.41%	13.49%	52%
1006104	O.C. Jones & Sons	\$15,058,775	70.75%	56.26%	14.48%	100%
1006105	Gallagher & Burk	\$5,234,525	84.80%	64.21%	20.59%	89%
1006105	McGuire & Hester	\$5,269,205	78.90%	68.13%	12.77%	53%
1006105	Teichert Construction	\$5,303,700	23.86%	22.06%	1.80%	100%
1006105	O.C. Jones & Sons	\$5,695,775	72.39%	60.86%	11.54%	100%

To achieve the goals of completing the 3YP and the increased annual mileage goals set by the 5YP, paving must occur year-round and take special advantage of spring and summer seasons which generally have less inclement weather than the fall and winter. Additionally, staff's experience is that multiple contracts with multiple contractors are necessary to achieve the ambitious mileage goals of the City's adopted paving plans. For continuous paving through the spring and summer, staff recommend awarding the contracts as proposed:

Table 2: Proposed Contract Awards for Project 1006103, 1006104, and 1006105

Project	Bidder	Bid	Proposed Contract Award
1006103	Gallagher & Burk	\$13,657,500	\$13,657,500
TBA	McGuire & Hester	\$13,802,960	\$13,657,500
TBA	O.C Jones & Sons	\$15,058,775	\$13,657,500
1006104	Gallagher & Burk	\$13,657,500	\$13,657,500
	McGuire & Hester	\$13,802,960	None
	O.C. Jones & Sons	\$15,058,775	None
1006105	Gallagher & Burk	\$5,234,525	\$5,234,525
	McGuire & Hester	\$5,269,205	None
	Teichert Construction	\$5,303,700	None
	O.C. Jones & Sons	\$5,695,775	None
Total			\$59,864,525

In summary, this proposal would award to all three responsible bidders on Project 1006103 (Gallagher & Burk, McGuire & Hester, O.C. Jones & Sons), providing that all agree to meet the bid schedule of the lowest responsible bidder (Gallagher & Burk). This proposal would also award contracts to the lowest responsible bidder (Gallagher & Burk) on Project 1006104 and Project 1006105.

While all bidders were deemed responsible for award, no contractor proposed for award was responsive to the full requirement for local participation. Given that per LBE program requirements no bidders were responsive, Council has the authority to reject all bids. With this direction, staff would rebid the projects.

Staff do not recommend rebidding the projects for several reasons. First, all bids received were qualified and responsible bids from contractors, and all bids proposed for award did achieve

significant (70%) local business enterprise participation, reflecting a significant return of City dollars to local business entities. Second, there is no guarantee that a future solicitation would not result in a similar outcome of 100% non-responsiveness to the 25% S/VSLBE participation requirement. Third, these contracts represent staff's plan for supporting the completion of the 3YP in Spring 2022 and initiation of the 5YP in summer 2022. Existing contract capacity is not sufficient to continue paving at the pace needed to fulfill these commitments. Rebidding would create a "dead zone" of no contract paving during the peak construction months of spring and summer. This is because the process for advertising, bidding, award, and contract execution takes a minimum of 4 months. Under as-needed contracts such as those proposed for award, work orders must be issued to direct the contractors on the locations to pave, which can take an additional 1-1.5 months to finalize. In short, insufficient contract capacity would be in place in spring 2022 to complete the 3YP and it is very likely that no contract capacity would be available to begin implementation of the 2022 5YP in July 2022. Consequently, final paving on 3YP streets would be delayed to late summer 2022, 5YP paving would not begin until fall 2022 at the earliest, and the total mileage for the year would be reduced.

As proposed, the resolutions would enable the City to award five paving contracts at once, providing the needed contract capacity to complete the last season of paving under the 3YP and begin implementation of the 5YP in June 2022 as scheduled.

Oakland Municipal Code (OMC) section 2.04.050 requires advertising and competitive bidding for contracts for the purchase of services, supplies or combination required by the City in any one transaction which exceeds \$50,000, and the award to the lowest responsible, responsive bidder if an award is made. However, OMC Title 2, Chapter 2.0, Article 1, Section 2.04.050.1 5 provides an exception to this advertising and competitive bidding requirement when specifically authorized by the City Council after a finding and determination that it is in the best interests of the City.

Staff requests that the City Council find and determine that it is in the best interests of the City to waive any further advertising and competitive bidding on any of these projects, and the City's 25% small/very small local business enterprise participation requirement based upon the following:

- Unit prices will be frozen at the 2021 competitively-bid contract amounts, representing a cost advantage for the City versus new unit prices on the open market.
- Meeting the City's ambitious paving mileage goals is a challenge and contractor availability is key to completing highly anticipated mileage in all Council districts and plan areas.
- The City is proposing awards to the lowest responsible bidder on each of the three projects, and to additional contractors on one project, so long as each bidder meets the lowest bidder's unit prices.
- All bids proposed for award exceed 70% local participation, reflecting a significant return of City dollars to local businesses.

It is in the best interest of the City to approve the proposed resolution and waive further advertising competitive bidding per the OMC Section 2.04.050.1.5, to award the contracts for the reasons stated above.

The five proposed as-needed contracts will provide capacity to repave 60-75 centerline miles of City streets, depending on the street width and pavement treatment. The work includes pavement rehabilitation, pavement reconstruction, base repair, crack sealing, microsurfacing, speed bump installation, sidewalk repair, curb ramp construction, traffic striping, and other related work as indicated in the bid schedule.

Construction is anticipated to begin in early 2022.

FISCAL IMPACT

Since this set of as-needed construction contracts represents a proactive plan to bring on resources that are projected to be needed, specific funding codes are not yet identified. Delivery of repaving projects citywide are funded by local, regional, state, and federal sources, such as Measure B, Measure BB, Measure KK, and various other grant sources as appropriated in Fiscal Year (FY) 21-22 budget adopted by the City Council. The majority of the funding for these projects will come from Measure KK. Approval of these resolutions will not result in additional appropriation of funds.

PAST PERFORMANCE, EVALUATION AND FOLLOW-UP

The Contractor Performance Evaluations for Gallagher & Burk, Inc., from previously completed projects were satisfactory and are included as ***Attachment C***.

PUBLIC OUTREACH/INTEREST

Street repaving is one of the top priorities for Oaklanders, and a significant public outreach process was performed toward the adoption of the 2022 5YP. The bid requests for these projects were disseminated using both the City's web-based procurement system, iSupplier, as well as through a formal advertisement in the East Bay Times (formerly the Oakland Tribune). Additionally, staff provided notice to labor representatives, per the terms and conditions of the current Memorandums of Understanding with the International Federation of Professional & Technical Engineers (IFPTE) Local 21, Service Employees International Union (SEIU) 1021 and International Brotherhood of Electrical Workers (IBEW) 1245 prior to the formal issuance of the bid request. Finally, staff also presented on the three contract opportunities at a contracting opportunities workshop in August 2021, co-hosted by the City Administrator's Office and the Oakland African-American Chamber of Commerce.

Prior to starting construction, residents and businesses affected by the work will be notified regarding the construction schedule and planned activities.

COORDINATION

The work to be done under these contracts was coordinated with Oakland Public Works (OPW) Project Delivery Division and DWES. In addition, the Office of City Attorney and Budget's Bureau has reviewed this report and resolution.

SUSTAINABLE OPPORTUNITIES

Economic: All construction contracts require the payment of prevailing wage rates, which offer a livable wage for workers and contribute to an improved quality of life. Streets in good condition may indirectly improve the business climate. The contractors are verified for Local Business Enterprise and Small Local Business Enterprise participation by DWES. The construction services provided by local firms will result in dollars being spent locally.

Environmental: The contractors will be required to make every effort to use best management practices for the protection of storm water runoff during construction. Additionally, recyclable materials will be used within the concrete and asphalt concrete construction materials to the greatest extent possible. Grindings from asphalt paving will be recycled whenever possible.

Race & Equity: These construction contracts will implement the adopted 5YP which incorporated social equity as a prioritization metric for local streets paving, ensuring that underserved communities are prioritized for paving investment. Additionally, the more than 100 miles of streets as part of the 5YP will receive accessibility improvements including curb ramp improvements, sidewalk repairs, and crosswalk marking upgrades, further extending the impact of the equity framework of the 5YP.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REVIEW/FINDINGS

The Project is exempt from CEQA pursuant to Public Resources Code Section 711.4 and pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a Community Plan, General Plan or Zoning), 15301(c) (Existing Facilities, Highways and Streets), 15302 (Replacement or Reconstruction), 15303 (Small Structures), 15304(h) (minor alterations to land), and/or 15061(b)(3) (No Significant Effect on the Environment); each of the aforementioned provides a separate and independent basis for CEQA compliance. Therefore, staff recommends that the Council find and determine that the Project is exempt from CEQA pursuant to Public Resources Code Section 711.4 and pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a Community Plan, General Plan or Zoning), 15301(c) (Existing Facilities, Highways and Streets), 15302 (Replacement or Reconstruction), 15303 (Small Structures), 15304(h) (minor alterations to land), and/or 15061(b)(3) (No Significant Effect on the Environment); each of the aforementioned provides a separate and independent basis for CEQA compliance.

ACTION REQUESTED OF THE CITY COUNCIL

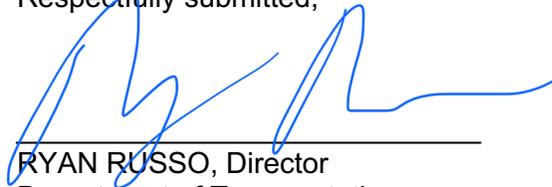
Staff Recommends That The City Council Adopt The Following:

1. A Resolution Waiving Further Advertising, Competitive Bidding, And The City's Small-Very Small Local Business Enterprise Participation Requirement And Authorizing The City Administrator To Negotiate And Award Construction Contracts To 1) Gallagher & Burk 2) McGuire & Hester And 3) O.C. Jones & Sons Provided That All Meet The Contractor's Bid Schedule Of The Lowest Responsible Bid Of Gallagher & Burk, For As-Needed Pavement Rehabilitation Services (Project Number 1006103) In Accordance

- With The Project Plans And Specifications And The Lowest Responsible Bidder In Accordance With Contractor's Bid In An Amount Not To Exceed Thirteen Million, Six Hundred Fifty-Seven Thousand, Five Hundred Dollars (\$13,657,500.00) Each, Without Return To Council, And 4) Adopting Appropriate California Environmental Quality Act (CEQA) Findings, And
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For questions regarding this report, please contact Sarah Fine, Complete Streets Paving Program Manager, (510) 238-6241.

Respectfully submitted,



RYAN RUSSO, Director
Department of Transportation

Reviewed by:
Fred Kelley
Assistant Director
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Reviewed by:
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Prepared by:
Mastewal Cherinet, PE
Civil Engineer

Attachments (2):

A: Contracts & Compliance Unit Compliance Evaluation

B: Contractor Performance Evaluation