



AGENDA REPORT

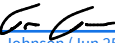
TO: Jestin D. Johnson
City Administrator

FROM: Josh Rowan
Director, OakDOT

SUBJECT: Ensuring a Competitive Market for
PROW Construction

DATE: July 08, 2025

City Administrator Approval


Jestin Johnson (Jun 25, 2025 17:23 PDT)

Date: Jun 25, 2025

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution To Waive Local/Small Local Business Enterprise Program Requirements (Ordinance 13101, Ordinance 13640 As Amended) For Pedestrian Right-Of-Way Construction To Increase Competition, Lower Prices, And Enable Rapid Compliance In The Event The Parties Of Curran Vs. City Of Oakland Reach Settlement.

EXECUTIVE SUMMARY

The proposed resolution would broaden the contracting market and increase competition for pedestrian right-of-way construction by waiving Local/Small Local Business Enterprise (L/SLBE) Program requirements during the term of the anticipated Curran vs City of Oakland negotiated settlement agreement. Pedestrian right-of-way construction includes curb ramps, sidewalk repair, curb and gutter repair, stairs and paths, and any ancillary work required for such improvements.

BACKGROUND / LEGISLATIVE HISTORY

On May 15, 2023, the City of Oakland was served a class action lawsuit related to accessibility of the pedestrian right-of-way (i.e., curb ramps and sidewalks). The City has participated in multiple mediation sessions with the Plaintiffs' attorneys from 2023 through 2025 regarding a potential settlement agreement and long-term consent decree addressing curb ramp installation and remediation of deficient curb ramps, and accessibility of sidewalks. Numerous large cities across the U.S. have entered similar consent decrees, which typically require that certain amounts of curb ramp and sidewalk work be performed each year during the duration of the decree.

On March 19, 2024, the City Council approved Resolution Number [90155 C.M.S.](#), which waived L/SLBE requirements on Project 1006308: 2024-2025 Citywide Curb Ramps and preauthorized construction award for the Project. The project included the construction of 240 curb ramps, 300 square feet of retrofitting detectable warning dome pavers, approximately 25,000 square feet of sidewalk replacement, and other related items required for the construction of sidewalks and curb ramps. Staff recommended that Council waive L/SLBE requirements on Project 1006308 to attract contractors who may not have previously submitted bids and promote a more competitive

bid process. The recommendation was based on a review of neighboring cities' construction projects. Staff found that Oakland sees, on average, 3 fewer bids per project and pays \$1500 more per curb ramp than neighboring cities. City Council approved the resolution, and the project was pre-authorized for award with L/SLBE requirements waived.

ANALYSIS AND POLICY ALTERNATIVES

The construction of pedestrian right of way projects is an essential city function for meeting the Citywide priority of providing vibrant, sustainable infrastructure. Accessible pedestrian infrastructure promotes healthier communities and connects residents to their communities and essential services. The proposed waiver of the L/SLBE program requirements in this resolution will help the City efficiently construct pedestrian infrastructure improvements.

The proposed resolution would waive the L/SLBE program requirements for all pedestrian right-of-way construction. The intent of the waiver is to ensure the City has a robust pool of contractors to perform mandated pedestrian right-of-way construction. Currently, there is not a robust pool of locally certified contractors that perform curb ramp and sidewalk improvements. There are currently no certified SLBE firms that have bid on curb ramp contracts in the past 5 years, and there are 4 certified SLBE firms deemed to have the capability to repair concrete sidewalks. In the recent Small Sidewalk On-Call Construction Request for Bid process, only 1 certified SLBE firm returned a bid.

In addition, Oakland's L/SLBE program requirements make it such that no non-local firm can win a curb ramp or sidewalk bid. Curb ramp and sidewalk improvement projects are not like paving projects, where a large firm primes the contract, and sub-contractors work on various subcontractors. Typically, a prime performs 75-90% of the value of the contract. Current L/SLBE requirements stipulate that 50% of each construction contract be performed by a certified Local Business Enterprise, with 25% of that performed by a certified Small Local Business Enterprise (SLBE) or Very Small Local Business Enterprise (VSLBE). With Oakland's L/SLBE requirements applied to curb ramp and sidewalk improvement projects, this would require a non-local firm to arbitrarily sub out 25-50% of the work to another firm that performs the same work. Again, currently, there are no certified SLBE firms that perform curb ramp construction.

The impact of this situation is that without a robust pool of contractors, the City has seen fewer bids per project and increased unit prices compared to neighboring jurisdictions ([FY23 Annual Curb Ramp Report](#)). In addition, fewer contractors that perform this work means greater risk for the City if a primary contractor retires or goes out of business. In the context of a consent decree mandating the number of ramps and sidewalk replacements performed every year, the City must maximize the number of ramps and sidewalk replacements that can be built each year for the least unit cost and ensuring that consent decree compliance does not rest on the performance of one local business.

The proposed resolution seeks to address this issue by waiving L/SLBE program requirements for pedestrian right-of-way construction. In an analysis done for the 2024-2025 Citywide Curb Ramp Project (1006308) in which L/SLBE requirements were waived, staff found that a reduction in L/SLBE requirements resulted in attracting more bids from contractors with more competitive per unit construction prices when compared to similar projects. In September 2024,

the City Council approved Reso No. [90421 C.M.S.](#), authorizing the award of Project 1006302, which proposed improvements to the pedestrian right-of-way in West Oakland, but did not fully waive L/SLBE requirements. The bidding process ended with a bid from a single contractor, with a cost 21% over the City Engineer's estimate. Overall, project 1006302 had a 20% cost increase for sidewalk repair and a 32% increase for curb ramp replacement.

The resolution defines pedestrian right-of-way construction as improvements made to pedestrian facilities in the public right-of-way, including curb ramps, sidewalks, curbs and gutters, and other ancillary work necessary for pedestrian right-of-way construction. The intent of the resolution is to ensure that the City has access to a robust pool of contractors for all pedestrian right-of-way construction. The resolution would apply to the pedestrian right-of-way scope within any applicable City construction projects. For example, a significant sub-component of pavement rehabilitation work is the required improvement of adjacent ADA curb ramps. In Fiscal Year 2024, 1077 of the 1154 curb ramps constructed citywide were delivered through the paving program ([FY24 Annual Curb Ramps Report](#)). Unfortunately, due to the restrictive local market for concrete contractors, this has meant that the same contractor performing curb ramp construction for paving projects is also the only contractor bidding on the City's curb ramp projects. The proposed resolution would ensure broader access to a more competitive market for all pedestrian right-of-way construction.

Policy Alternatives

An alternative to the proposed resolution would be for staff to request an Availability Analysis for every pedestrian right-of-way construction project that is prepared for bid. Prepared by the Department of Workplace and Employment Standards (DWES), an Availability Analysis applies the "Rule of Three," in which there must be at least three certified businesses listed in the industry, trade, or profession that constitutes a major category of work. An Availability Analysis may be performed prior to advertisement if there is reason to believe that the availability of certified firms will not satisfy the Rule of Three and the 50% Local Business Enterprise requirement. The request for an Availability Analysis must be made prior to advertisement and/or in time for completion of the analysis prior to issuing an invitation for bids (IFB), request for proposals (RFP), or any other solicitation. Through an Availability Analysis, DWES may reduce the required participation from 50% to a lower threshold. If at least one firm is available to perform the work, the minimum participation must be at least 20%.

This approach was taken with Project 1006302, in which staff requested an Availability Analysis. Through this analysis, DWES determined that at least one local firm was available to perform the work, and accordingly, the L/SLBE participation requirement was reduced to 20%. The bidding process ended with a bid from a single contractor, with a cost 21% over the City Engineer's estimate. Individual unit prices on 1006302 reflected new price points not previously canvassed, with a 20% cost increase for sidewalk repair and a 32% increase for curb ramp replacement compared to a recent project in which L/SLBE was fully waived.

There is also consideration of the staff capacity and time delay to prepare the Availability Analysis. Because the analysis must be performed before a project is advertised, the need for analysis delays the initiation of the bid-award phase of a construction project by up to a month. Preparing the analyses also takes staff time. One option to reducing the impact on DWES staff time is to recycle analyses conducted in the past 6-12 months on similar projects. However, as

with the Project 1006302 example, recycling prior analyses may mean locking in participation requirements that will produce similar, non-optimal results.

Another alternative to the resolution would be for OakDOT staff to prepare individual requests for waivers. The key drawback is the staff time and project delay. Staff prepare agenda packets for review and revision by multiple departments, along with the City Attorney and the City Administrator's office, before they are presented to the City Council for approval. Before a project can be bid, this process adds a minimum lead time of three months to schedule an item on the City Council agenda and may not necessarily produce consistent results.

For a program that needs to hit annual targets for curb ramp and sidewalk production, including to comply with an anticipated negotiated settlement agreement, these are not ideal conditions to consistently achieve predictable results. Waiving L/SLBE requirements for pedestrian right-of-way projects will put the City in an optimal position to fulfill the sidewalk construction and curb ramp production requirements and comply with the anticipated consent decree.

FISCAL IMPACT

An estimated 20% cost reduction in bid prices for construction is expected by waiving L/SLBE requirements, per the analyses cited earlier in this report. An estimated reduction of 6-8 hours of DWES staff time when reviewing L/SLBE compliance for each bid opening would also represent potential cost savings to the City.

PUBLIC OUTREACH / INTEREST

The subject matter of this report was presented to the Mayor's Commission on Persons with Disabilities and the Bicyclist and Pedestrian Advisory Commission.

COORDINATION

The Office of the City Attorney and Budget Bureau were consulted in the preparation of this report.

SUSTAINABLE OPPORTUNITIES

Economic: Improved pedestrian right-of-way conditions encourage more activity, increased community cohesion, increased neighborhood security, and improved public transit access, all of which contribute to higher property values and increase foot traffic for local businesses.

Environmental: Clear, accessible paths of travel contribute to walkable neighborhoods, reducing environmental impacts associated with transportation.

Social Equity: Creating clear, accessible paths of travel is a key component of the City's ADA Transition Plan. Sidewalk repairs also reduce trip and fall incidents, which generally impact older Oaklanders and visitors.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt A Resolution To Waive Local/Small Local Business Enterprise Program Requirements (Ordinance 13101, Ordinance 13640 As Amended) For Pedestrian Right-Of-Way Construction To Increase Competition, Lower Prices, And Enable Rapid Compliance In The Event The Parties Of Curran Vs. City Of Oakland Reach Settlement.

For questions regarding this report, please contact Sarah Fine, Acting Complete Streets Infrastructure Division Manager, at (510) 238-6241.

Respectfully submitted,


Jamie Parks (Jun 24, 2025 15:21 PDT)

JOSH ROWAN
Director
Oakland Department of Transportation

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Oakland Department of Transportation

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Complete Streets Infrastructure

Prepared by:
Joseph Palacio, Assistant Engineer II
Pedestrian Right-of-Way

Attachments (2):

A: *Informational Memo: Bid Summary 1006308*
B: *Resolution (1006308) No. [90155](#) C.M.S*