



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Fred Kelley
Director, Oakland
Department of
Transportation

SUBJECT: 2021 As-Needed Pavement
Rehabilitation Services

DATE: October 10, 2022

City Administrator Approval 

Date: Oct 13, 2022

RECOMMENDATION

Staff Recommends That The City Council Adopt The Following Legislation:

- 1. A Resolution Rejecting All Bids, Waiving Further Advertising And Competitive Bidding, And Authorizing The City Administrator To Negotiate In The Open Market For 2021 As-Needed Pavement Rehabilitation Services (Project 1006103); And Authorizing The City Administrator To 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 2021 As-Needed Pavement Rehabilitation Services (Project Number 1006103) In Accordance With The Project Plans And Specifications And The Lowest Responsive, Responsible Bidder In An Amount Not To Exceed Fifteen Million, Twenty-Three Thousand, Two Hundred and Fifty Dollars (\$15,023,250.00), Contingent Upon Availability of Funds, And Adopting Appropriate California Environmental Quality Act (CEQA) Findings; And**
- 2. A Resolution Rejecting All Bids, Waiving Further Advertising And Competitive Bidding, And Authorizing The City Administrator, Or Designee, To Negotiate In The Open Market For 2021 As-Needed Pavement Rehabilitation Services (Project 1006104); And Authorizing The City Administrator To Award A Construction Contract For 2021 As-Needed Pavement Rehabilitation Services (Project 1006104) to Gallagher & Burk, The Lowest Responsive, Responsible Bidder In Accordance With The Project Plans And Specifications And Contractor's Bid In An Amount Not To Exceed Fifteen Million, Twenty-Three Thousand, Two Hundred and Fifty Dollars (\$15,023,250.00), Contingent Upon Availability of Funds, And Adopting Appropriate California Environmental Quality Act (CEQA) Findings; And**
- 3. A Resolution Rejecting All Bids, Waiving Further Advertising And Competitive Bidding, And Authorizing The City Administrator To Negotiate In The Open Market For 2021 As-Needed Pavement Rehabilitation Services (Project 1006105); And Authorizing The City Administrator To Award A Construction**

Contract For 2021 As-Needed Pavement Rehabilitation Services (Project 1006105) To Gallagher & Burk, The Lowest Responsive, Responsible Bidder In Accordance With The Project Plans And Specifications And Contractor's Bid In An Amount Not To Exceed Five Million, Seven Hundred Fifty-Seven Thousand, Nine Hundred Seventy-Seven Dollars, and Fifty Cents (\$5,757,977.50), Contingent Upon Availability of Funds, And Adopting Appropriate California Environmental Quality Act (CEQA) Findings.

EXECUTIVE SUMMARY

Approval of the proposed resolutions will authorize the City Administrator to execute five construction contracts. Contracts would be awarded to Gallagher & Burk, McGuire & Hester, and O.C. Jones & Sons, in the amount of \$15,023,250.00 each for As-Needed Pavement Rehabilitation Services (Project 1006103). Contract award is stipulated on each contractor matching the lowest responsible, responsive negotiated bid (Gallagher & Burk). Contract award is also recommended for to Gallagher & Burk, in accordance with the lowest responsible, responsive negotiated bid, in the amount of \$15,023,250.00 and \$5,757,977.50 for Projects 1006104 and 1006105 respectively. This contract capacity would enable the completion of the 2019 3-Year Paving Plan in Fall/Winter 2022 and implementation of the 2022 5-Year Paving Plan beginning in Spring 2023. Per Council direction, City has negotiated with all bidders to achieve compliance with the City's Local/Small Local Business Enterprise (S/LBE) program requirements. All proposed contracts are S/LBE compliant.

BACKGROUND/LEGISLATIVE HISTORY

On December 21, 2021, City Council approved the 5-Year Paving Plan (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 Program (CIP) ([Resolution No. 88717 C.M.S.](#)). 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.

On January 18, 2022, staff presented an agenda report to City Council recommending award of the five projects. Staff's finding at the time was that no bidders were responsive to the City's S/LBE participation requirements. The staff recommendation to City Council was to waive the S/LBE requirement and award the five contracts. City Council declined to approve the waiver and directed staff to return to Council with a resolution rejecting all bids on all three projects, authorizing staff to negotiate with the bidders to achieve bids compliant with the S/LBE program requirements, and awarding contracts to bids compliant with S/LBE program requirements.

ANALYSIS / POLICY ALTERNATIVES

The proposed policy action would award five construction contracts to perform pavement rehabilitation and preventative maintenance, contributing to the citywide priority of **vibrant and**

sustainable infrastructure. Paving projects also incorporate both routine upgrades, such as high visibility crosswalks, and are a primary avenue for delivering comprehensive corridor-based traffic safety improvements as well, contributing to the citywide priority of holistic community safety.

Initial Bid Opening

On September 30, 2021, City received 10 bids as part of three as-needed paving projects. The first project (1006103) received 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, responsive bid (Gallagher & Burk, \$13,657,500) was 1.27% over engineer's estimate.

The second project (1006104) received 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, responsive bid (Gallagher & Burk, \$13,657,500) was 1.27% over engineer's estimate.

The third project (1006105) received 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, responsive bid (Gallagher & Burk, \$5,234,525) was 3.2% over engineer's estimate.

Analysis performed by the Department of Workplace & Employment Standards (DWES) in November 2021 (**Attachment A**) identified that none of the ten bids on the three projects achieved 50% S/LBE participation through a combination of at least 25% LBE and at least 25% Small/Very Small Local Business Enterprise (S/VSLBE) participation, and 50% S/LBE trucking participation.

Negotiations To Achieve S/LBE Compliance

Per City Council's January 18, 2022 direction, the City negotiated with bidders on Project 1006103, 1006104, and 1006105 to achieve compliance with Oakland's S/LBE program requirements.

The results of the negotiations are five bids that are compliant with the City's S/LBE program and have increased S/LBE participation compared to the original bids. Given that more than 120 days has passed since the original bids were opened in September 2021, contractors were not obligated to maintain their submitted bid price. Acknowledging this and increases in price of fuel and materials since September 2021, City accepted contractors' proposal to increase unit prices by 10% to reflect this change in circumstance. The 10% increase is consistent with other construction bids opened since September 2021.

Proposed Contract Awards

Compliant with the City's S/LBE program, Gallagher & Burk remains the lowest, responsive, responsible bidder on Projects 1006103, 1006104, and 1006105 is recommended for negotiated contract award on all three projects. Analysis of the proposed negotiated bids' compliance with the City's S/LBE program is provided in **Attachment B**.

To increase competitiveness in work order authorizations and to expand the labor pool available to support City paving projects, staff also recommend awarding negotiated contracts under Project 1006103 to McGuire & Hester and OC Jones & Sons, stipulated on their matching the negotiated bid schedule of the lowest bidder (Gallagher & Burk). Together with Gallagher & Burk's low bid on 1006104 and 1006105, the proposed contract awards are summarized in the table below.

Table 1: Proposed Contract Awards for Project 1006103, 1006104, and 1006105

Project	Bidder	Proposed Contract Award
1006103	Gallagher & Burk	\$15,023,250.00
1006104	Gallagher & Burk	\$15,023,250.00
1006105	Gallagher & Burk	\$5,757,977.50
Negotiated Contract 1	McGuire & Hester	\$15,023,250.00
Negotiated Contract 2	O.C Jones & Sons	\$15,023,250.00
Total		\$65,850,977.50

Under construction contracts, work is performed by primes and subcontractors, with additional contract value expended on material and supply. The following tables provide the share of contract dollars estimated for each listed prime, subcontractor, or supplier and the respective S/LBE business category as applicable, on each project recommended for award. Specialty items are not included in the overall share of each contract as they do not count toward local participation calculations.

In the tables below, bolded percentages indicate local participation towards the 25% S/SLBE requirement.

Table 2: Project 1006103 (Bidder: Gallagher & Burk)

DISCIPLINE	FIRM	LOCATION	S/LBE	ESTIMATE	%
PRIME	Gallagher & Burk	Oakland	LBE	\$5,480,250	51%
MINOR CONCRETE	Rosas Brothers	Oakland	SLBE	\$2,200,000	18%
SLURRY SEAL	Bond Blacktop	Union City		\$300,000	2%
ASPHALT CONCRETE	Gallagher & Burk	Oakland	LPG	\$3,608,000	--
STRIPING	Chrisp Company	Fremont		\$1,835,000	15%
TRUCKING	Monroe Trucking	Oakland	SLBE	\$1,100,000	9%
ADJUSTMENT OF UTILITIES	Focon Construction	Oakland	SLBE	\$500,000	4%

Table 3: Project 1006104 (Bidder: Gallagher & Burk)

DISCIPLINE	FIRM	LOCATION	S/LBE	ESTIMATE	%
PRIME	Gallagher & Burk	Oakland	LBE	\$6,138,250	51%
MINOR CONCRETE	Rosas Brothers	Oakland	SLBE	\$2,200,000	18%
SLURRY SEAL	Bond Blacktop	Union City		\$300,000	2%
ASPHALT CONCRETE	Gallagher & Burk	Oakland	LPG	\$2,950,000	--
STRIPING	Chrisp Company	Fremont		\$1,835,000	15%
TRUCKING	Monroe Trucking	Oakland	SLBE	\$1,100,000	9%
ADJ. OF UTILITIES	Focon Construction	Oakland	SLBE	\$500,000	4%

Table 4: Project 1006105 (Bidder: Gallagher & Burk)

DISCIPLINE	FIRM	LOCATION	S/LBE	ESTIMATE	%
PRIME	Gallagher & Burk	Oakland	LBE	\$2,483,978	55%
MINOR CONCRETE	Rosas Brothers	Oakland	SLBE	\$640,000	14%
SLURRY SEAL	Bond Blacktop	Union City		\$124,000	3%
ASPHALT CONCRETE	Gallagher & Burk	Oakland	LPG	\$1,250,000	--
STRIPING	Chrisp Company	Fremont		\$630,000	14%
TRUCKING	Monroe Trucking	Oakland	SLBE	\$525,000	12%
ADJ. OF UTILITIES	Focon Construction	Oakland	SLBE	\$105,000	2%

Table 5: Project 1006103 (Bidder: McGuire & Hester)

DISCIPLINE	FIRM	LOCATION	S/LBE	ESTIMATE	%
PRIME	McGuire & Hester	Oakland	LBE	\$4,823,356	52%
MINOR CONCRETE	Rosas Brothers	Oakland	SLBE	\$1,822,500	16%
SLURRY SEAL	Bond Blacktop	Union City		\$303,500	3%
ASPHALT CONCRETE	Gallagher & Burk	Oakland	LPG	\$4,828,150	--
STRIPING	Chrisp Company	Fremont		\$1,835,750	16%
TRUCKING	Monroe Trucking	Oakland	SLBE	\$400,000	3%
TRUCKING	S & S Trucking	Oakland	SLBE	\$650,000	6%
ADJ. OF UTILITIES	Giron Construction	Oakland	SLBE	\$520,000	5%

Table 6: Project 1006103 (Bidder: OC Jones & Sons)

DISCIPLINE	FIRM	LOCATION	S/LBE	ESTIMATE	%
PRIME	OC Jones & Sons	Oakland	LBE	\$6,200,553	49%
MINOR CONCRETE	Rosas Brothers	Oakland	SLBE	\$2,136,500	17%
SLURRY SEAL	Bond Blacktop	Union City		\$206,600	2%
ASPHALT CONCRETE	Gallagher & Burk	Oakland	LPG	\$2,901,000	--
STRIPING	Chrisp Company	Fremont		\$1,780,750	14%
TACK OIL, FOG SEAL	Pacific Northwest Oil	Stockton		\$188,500	1%
COLD MILL RENTAL	ABSL Construction	Hayward		\$709,400	6%
SURVEY	Towill, Inc.	Concord		\$270,000	2%
TRUCKING	S&S Trucking	Oakland	SLBE	\$1,150,000	9%
TRUCKING	Monroe Trucking	Oakland	SLBE	\$50,000	0.4%
FLAGGING/INLET PROTECTION	Cooper Construction	Oakland	VSLBE	\$90,000	1%

In addition to the City's S/LBE participation requirements, contractors must also comply with all other City requirements, including the City's Local Employment Program. This program policy stipulates that 50% of work hours must be performed by Oakland residents on a craft-by-craft basis. In addition, a minimum of 50% of all new hires on the project (on a craft-by-craft basis) must be Oakland residents, and the first new hire must be an Oakland resident.

In summary, this proposal would award to the lowest, responsible, responsive bidder on Project 1006103, 1006104, and 1006105 (Gallagher & Burk) and to the second and third lowest responsible, responsive bidder on 1006103 (McGuire & Hester and OC Jones & Sons), providing that both agree to meet the bid schedule of the lowest responsible, responsive bidder (Gallagher & Burk). All contract awards exceed the City's requirements for S/LBE participation and local hire.

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 three-year paving plan (3YP) and begin implementation of the 5YP.

Waiving Advertising and Competitive Bidding

In January 2021, Council directed staff to return with a resolution to reject all bids on all three projects, authorize staff to negotiate with the bidders to achieve bids compliant with the S/LBE program requirements, and award contracts to bids compliant with S/LBE program requirements. Awarding negotiated contracts requires waiving advertising and competitive bidding.

Oakland Municipal Code (O.M.C.) 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, O.M.C. Title 2, Chapter 2.0, Article I, Section 2.04.050.I 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 further advertising and competitive bidding on the following basis:

- 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 planning areas.
- The City is proposing awards to the lowest responsible responsive 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 contracts proposed for award achieve compliance with the City's S/LBE program and local hire requirements.

It is in the best interest of the City to approve the proposed resolution and waive further advertising and competitive bidding per the O.M.C. Section 2.04.050.I.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 winter 2022 to implement the remaining commitments from the 2019 3YP and begin the 2022 5YP.

City Council also has the option of rejecting all bids and directing staff to rebid the projects. Staff does not recommend this, as negotiated bids are deemed responsible, responsive bids that comply with City policies, provide needed contract capacity to implement Council's goals for annual paving mileage, and each exceed the City's S/LBE program requirements. Additionally, new bids on the open market will be even less cost-competitive than the negotiated bids. Staff do

not recommend terminating the bid-award process because it would be contrary to council direction to date, would delay for six-months to one-year the delivery of pavement, sidewalk, ADA accessibility, traffic calming and safety benefits that serve to address the inequities that the Council has prioritized, and would not lead to substantially different outcomes given an unchanged policy environment.

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. Most 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 and McGuire & Hester from previously completed projects were satisfactory or higher 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 Multicultural Chambers 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) Construction Management Division and DWES. In addition, the Office of City Attorney and Finance Department Budget 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 race and 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 Legislation:

1. **A Resolution Rejecting All Bids, Waiving Further Advertising And Competitive Bidding, And Authorizing The City Administrator To Negotiate In The Open Market For 2021 As-Needed Pavement Rehabilitation Services (Project 1006103); And Authorizing The City Administrator To 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 2021 As-Needed Pavement Rehabilitation Services (Project Number 1006103) In Accordance With The Project Plans And Specifications And The Lowest Responsive, Responsible Bidder In An Amount Not To Exceed Fifteen Million, Twenty-Three Thousand, Two Hundred and Fifty Dollars (\$15,023,250.00), Contingent Upon Availability of Funds, And Adopting Appropriate California Environmental Quality Act (CEQA) Findings; And**
2. **A Resolution Rejecting All Bids, Waiving Further Advertising And Competitive Bidding, And Authorizing The City Administrator To Negotiate In The Open Market For 2021 As-Needed Pavement Rehabilitation Services (Project 1006104); And Authorizing The City Administrator To Award A Construction Contract For 2021 As-Needed Pavement Rehabilitation Services (Project 1006104) to Gallagher & Burk, The Lowest Responsive, Responsible Bidder In Accordance With The Project Plans And Specifications And Contractor's Bid In An Amount Not To Exceed Fifteen Million, Twenty-Three Thousand, Two Hundred and Fifty Dollars (\$15,023,250.00), Contingent Upon Availability of Funds, And Adopting Appropriate California Environmental Quality Act (CEQA) Findings; And**
3. **A Resolution Rejecting All Bids, Waiving Further Advertising And Competitive Bidding, And Authorizing The City Administrator To Negotiate In The Open Market For 2021 As-Needed Pavement Rehabilitation Services (Project 1006105); And Authorizing The City Administrator To Award A Construction Contract For 2021 As-Needed Pavement Rehabilitation Services (Project 1006105) To Gallagher & Burk, The Lowest Responsive, Responsible Bidder In Accordance With The Project Plans And Specifications And Contractor's Bid In An Amount Not To Exceed Five Million, Seven Hundred Fifty-Seven Thousand, Nine Hundred Seventy-Seven Dollars, and Fifty Cents (\$5,757,977.50), Contingent Upon Availability of Funds, And Adopting Appropriate California Environmental Quality Act (CEQA) Findings.**

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

Respectfully submitted,

Fred Kelley

[Fred Kelley \(Oct 12, 2022 19:06 PDT\)](#)

FRED KELLEY, Director
Department of Transportation

Reviewed by:
Megan Wier, MPH
Acting Assistant Director

Amit Salwan, P.E.
Principal Civil Engineer

Prepared by:
Sarah Fine, MCP
Complete Streets Paving Manager

Attachments (3):

- A: Department of Workplace & Employment Standards Compliance Evaluation (Nov. 2021)*
- B: Department of Workplace & Employment Standards Compliance Evaluation (Aug. 2022)*
- C: Contractor Performance Evaluation*