



AGENDA REPORT


TO: Jestin D. Johnson
City Administrator

FROM: Fred Kelley
Director, Oakland
Department of
Transportation

SUBJECT: Award Construction Contract for
Citywide Curb Ramps Project
1006308

DATE: February 12, 2024

City Administrator Approval


Jestin Johnson (Feb 29, 2024 20:04 PST)

Date: Feb 29, 2024

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To Award A Construction Contract To The Lowest Responsive And Responsible Bidder, In Accordance With Project Plans And Specifications For Project No. 1006308 Citywide Curb Ramps 2024-2025, And With The Contractor's Bid That Includes Base Bid And Partial Or All Optional Items, For An Amount Not To Exceed Three Million, Three Hundred and Ten Thousand Dollars (\$3,310,000.00); Adopting Appropriate California Environmental Quality Act Findings; and Waiving Local/Small Local Business Enterprise Program Requirements.

EXECUTIVE SUMMARY

Approval of this resolution will waive the Local/Small Local Business Enterprise (L/SLBE) program requirements and authorize the City Administrator to execute a construction contract not to exceed three million, three-hundred and ten thousand dollars (\$3,310,000.00) with the lowest, responsible, and responsive bidder, for the Citywide Curb Ramps 2024-2025 (Project No. 1006308) (Project). The Project will reconstruct 240 curb ramps and adjacent sidewalks in the City of Oakland (City).

BACKGROUND / LEGISLATIVE HISTORY

On May 5, 2009, the City Council adopted the Americans with Disabilities Act (ADA) Transition Plan ([Resolution No. 81954](#)).

On June 26, 2023, the City Council adopted the Fiscal Year 2024-2025 Curb Ramp Capital Improvement Program (CIP), which funds implementation of the ADA Transition Plan ([Resolution No. 89804](#)).

On February 23, 2024, to implement the CIP, the City issued a Request for Bids (RFB), and the project was advertised for bid (**Attachment A**). The Project includes 240 curb ramps; 300 square feet of retrofitting detectable warning dome pavers; approximately 25,000 SF of concrete sidewalk replacement, and related ancillary items required for the construction of sidewalk and curb ramps, and the Engineer's estimate for the work is \$2,648,550.00.

ANALYSIS AND POLICY ALTERNATIVES

Contract Award

The Project is part of the City's ongoing sidewalk repair and curb ramp installation efforts and advances Citywide priorities of **holistic community safety, vibrant, sustainable infrastructure**, and **responsive, trustworthy government**. Construction of ADA-compliant curb ramps furthers the requirements of the ADA, reduces the City's trip and fall liability, and improves access for people with disabilities. This is a continuous effort to provide accessibility along the designated transportation corridors in accordance with the City's adopted ADA Transition Plan.

Construction scheduled for this yearly Citywide construction contract is to begin summer 2024 and expected to be completed in two years. The contract specifies \$1,000.00 in liquidated damages per day if the contract is not completed within the agreed schedule.

The Project was originally approved for bid in March 2023. Due to a slowdown in contract services in 2022 and 2023, the Project was not advertised until February 23, 2024. Bids are scheduled to be opened on April 18, 2024. The delay in advertising and bid opening created a lapse in contract availability for the curb ramp CIP. Since fall 2022, the program has not had an active curb ramp construction contract. Without access to a major contract to construct curb ramps, the curb ramp CIP has more than \$4M in unspent Measure KK funds. Overall, the City has also fallen behind on annual targets for curb ramp construction.

At this time, staff are seeking every avenue to streamline contract award and accelerate construction to regain lost time and curb ramp production. Therefore, while the Project is going through the bid process, City Council authorization is requested to authorize the City Administrator to award a construction contract to the lowest responsive and responsible bidder, in accordance with Project plans and specifications for Project No. 1006308 Citywide Curb Ramps CIP 2024-2025, and in accordance with the contractor's bid, for an amount not to exceed \$3,312,500.00. Upon bid opening and completion of compliance analysis, an informational memorandum will be provided to the City Council on the bid analysis and award. The parallel process will shorten the Project's award phase by approximately six weeks and will allow construction to begin in late spring 2024.

Waiver of L/SLBE Requirements

In addition, staff recommend that the City Council waive the L/SLBE requirements to expand the pool of bidders, increase competition, potentially lower prices, and improve contractor availability. Staff's analysis finds that the City is experiencing a reduction in the pool of bidders on curb ramp contracts compared to neighboring jurisdictions, has fewer than 3 local certified businesses that have historically constructed curb ramps in Oakland, has seen increased unit prices for curb ramps compared to other neighboring jurisdictions, and the primary local certified

business that has historically constructed curb ramps in Oakland is currently contractually obligated to implement more than 1000 curb ramps in the next 2 years and is potentially overcommitted. 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). This requirement is based on 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.

In order to determine the availability of the City's certified firms, the Department of Workplace and Employment Standards researched the certification database using North American Industry Classification System (NAICS) codes 237310 - Highway Street & Bridge Construction, 238110 - Poured Concrete Foundation and Structure Contractors, and 238190 - Other foundation, Structure and Building Exterior Contractors. This analysis returned 18 local firms. The search results include a spectrum of firms, from major general contractors such as McGuire & Hester and Gallagher & Burk to small firms that specialize in constructing fences. Of these 18 firms, 4 responded to DWES inquiry regarding the firms' ability to perform the work, including Rosas Brothers (LBE), North American Fence (LBE), McGuire & Hester (LBE), and USAct Corp (VSLBE). Based on these responses and the fact that there were at least three firms responding affirmatively that they could self-perform curb ramp construction, the Rule of Three applies, and the 50% requirement remains intact.

The Availability Analysis process for construction projects does not include a thorough evaluation of specific expertise or experience, such as reviewing these 4 local firms for their experience or expertise in constructing curb ramps. Given this limitation, staff have compiled bidder lists for curb ramp construction contracts during the past 5 years, reviewed curb ramp prime bidders' current L/SLBE certification status, reviewed current curb ramp contractor availability, and reviewed recent bids and bidder pools in neighboring Bay Area jurisdictions.

Table 1 provides a summary of the past ten years of curb ramp construction contract bid results, including the number of responsive bids received, a listing of all bidders, and the lowest bid. In each of the contracts in **Table 1**, curb ramp construction was the primary scope of work, representing the single largest pay item in the bid schedule. These past contracts are directly analogous to Project 1006308 Citywide Curb Ramps 2024-2025 and provide an apparent local contractor pool.

Table 1: Curb Ramp Bid Results (2015-Present)

Year	Project Number	No. of Responsive Bidders	Responsive Bidders (L/SLBE Status At Time of Bid) (Low Bidder in <u>Underline</u>)	Value
2015	C428014	2	<u>Seton Pacific (Uncertified)</u> Rosas Brothers Construction (SLBE)	\$656,955.00
2015	C428015	1	<u>Rosas Brothers Construction (SLBE)</u>	\$655,600.00
2017	1001614	2	<u>Rosas Brothers Construction (SLBE)</u> AJW Construction (SLBE)	\$521,000.00
2019	1004261	3	<u>Ray's Electric (SLBE)</u> AJW Construction (SLBE) Rosas Brothers Construction (SLBE)	\$1,542,400.00
2019	1004519	3	<u>Rosas Brothers Construction (SLBE)</u> AJW Construction (SLBE) Ray's Electric (SLBE)	\$2,257,400.00
2020	1005120	3	<u>AJW Construction (SLBE)</u> Ray's Electric (SLBE) Rosas Brothers Construction (SLBE)	\$2,398,000.00
2021	1006106	2	<u>Rosas Brothers Construction (SLBE)</u> Ray's Electric (SLBE)	\$5,473,500.00

In 2021, major changes to the L/SLBE program were implemented through the enactment of [Ordinance No. 13640 C.M.S.](#) With the change in definitions that occurred with this update, some firms that were certified as SLBE no longer met the qualifications for SLBE and became certified LBEs.

Table 2 provides the current L/SLBE status of the firms identified in Table 1 as prime bidders on curb ramp construction contracts. Of all responsive bidders on Oakland curb ramp contracts during the past ten years, only Rosas Brothers Construction and Ray's Electric are currently certified businesses, and both are now certified as LBEs (no longer SLBEs).

Table 2: Current L/SLBE Status of Recent Curb Ramp Bidders

FIRM	S/LBE STATUS
AJW CONSTRUCTION	Not certified
RAY'S ELECTRIC	LBE
ROSAS BROTHERS CONSTRUCTION	LBE
SETON PACIFIC	Not certified

Under existing L/SLBE program requirements, all bids on Project 1006308 must demonstrate 50% participation by an LBE firm. At least 25% of that 50% must be participation by an SLBE firm. Another factor that staff considered in preparing the recommendation to waive L/SLBE requirements is the availability of SLBE contractors to achieve the 25% required participation of

SLBEs. Among all existing certified local firms, no current SLBE firm has ever bid on a City construction contract to construct ADA-compliant curb ramps.

In effect, this would mean the likely bidders for this project are just Rosas Brothers Construction and Ray's Electric. **Table 3** provides a summary of current open construction contracts that include curb ramp construction, identifying the project number, prime contractor, subcontractor performing the curb ramp construction, the overall contract value, and the contract unit price for curb ramps.

Table 3: Current Construction Contracts With Significant Curb Ramp Scope

Project No.	Prime	Curb Ramp Subcontractor	No. Ramps	Contract Value	Curb Ramp Unit Price
1006103	Gallagher & Burk	Rosas Brothers	200	\$15.0M	\$6050
1006104	Gallagher & Burk	Rosas Brothers	200	\$15.0M	\$6050
1006105	Gallagher & Burk	Rosas Brothers	50	\$5.8M	\$6050
1006106	Rosas Brothers	N/A	300	\$5.5M	\$5000
1006858	McGuire & Hester	Rosas Brothers	200	\$15.0M	\$6050
1006859	OC Jones & Sons	Rosas Brothers	200	\$15.0M	\$6050
1006337	McGuire & Hester	Rosas Brothers	200	\$15.1M	\$7000
1006338	Gallagher & Burk	Rosas Brothers	200	\$15.0M	\$7300
1006339	McGuire & Hester	Rosas Brothers	50	\$5.6M	\$7600
Total			1600		

As **Table 3** demonstrates, Rosas Brothers is the prime or subcontractor performing curb ramps on multiple ongoing construction projects. This has the potential to result in major delays on all projects. Expanding eligibility requirements for the Project could support more competitive bidding and increased contractor availability.

Table 4 provides a summary of recent curb ramp construction bids in other Bay Area jurisdictions. Notably, Rosas Brothers (one of the two local contractors performing curb ramp construction) is also active in other Bay Area cities.

Table 4: Recent Curb Ramp Construction Projects (Bay Area Jurisdictions)

Year	Jurisdiction	No of Bids	Bidders (<u>Low Bid in Bold Underline</u>), <u>DBE Firms in Italic</u>	Price of Curb Ramp (Low Bid)
2020	City of Albany (Solano ADA Curb Ramps Contract #20-65)	11	<i>Villalobos & Associates</i> Rosas Brothers Construction (Oakland) ERA Construction HM Construction R&S Construction Management Inc. Burch Construction Sposeto Engineering, Inc. (Livermore) MCE Corporation <i>JJR Construction, Inc. (San Mateo)</i> Kerex Engineering (Martinez) FBD Vanguard Construction, Inc.	\$3000

Year	Jurisdiction	No of Bids	Bidders (<u>Low Bid in Bold Underline</u>), <i>DBE Firms in Italic</i>	Price of Curb Ramp (Low Bid)
2021	City of Antioch <i>(Installation of Curb Ramps at Various Locations PW 409-7)</i>	13	<u>M4 Concrete & Drywall (Turlock)</u> <i>JJR Construction (San Mateo)</i> FBD Vanguard (Livermore) Rosas Brothers (Oakland) Kerex Engineering (Martinez) TNB Construction (Antioch) Sandstone Environmental Engineering (Oakley) Sposeto Engineering, Inc (Livermore) Ghilotti Bros (San Rafael) NorCal Concrete (Suisun City) JD Partners Concrete (Pleasanton) Central Valley Engineering & Asphalt (Roseville) Joe's Landscaping & Concrete (Newman)	(Not available)
2022	City of Fremont <i>(Concrete Repairs and Intersection Ramps Project)</i>	6	<u>JJR Construction, Inc (San Mateo)</u> Spenco Construction (San Ramon) Rosas Brothers Construction (Oakland) Sposeto Engineering, Inc. (Livermore) FBD Vanguard Construction (Livermore) Kerex Engineering (Martinez)	\$3250
2022	City of San Leandro <i>(Curb Ramp Upgrades for Annual Street Paving 2021-23 Project: 2022.0050)</i>	5	<u>Spenco Construction (San Ramon)</u> Kerex Engineering (Martinez) <i>JJR Construction, Inc. (San Mateo)</i> FBD Vanguard Construction, Inc. (Livermore) Sposeto Engineering (Livermore)	\$5000
2023	City of San Leandro <i>(Curb Ramp Upgrades for Annual Street Seal 2021-23 Project: 2022.0070)</i>	2	<u>Sposeto Engineering (Livermore)</u> Kerex Engineering (Martinez)	\$6000
2023	City of San Jose <i>(10348)</i>	5	<u>Spenco Construction</u> Rosas Brothers Construction (Oakland) Wattis Construction Co. Inc <i>Duran Construction Group</i> <i>JJR Construction, Inc.</i>	\$5000
2023	City of San Jose <i>(10349)</i>	5	<u>Wattis Construction Co. Inc</u> Rosas Brothers Construction (Oakland) Spenco Construction <i>Duran Construction Group</i> <i>JJR Construction, Inc.</i>	\$5155

Year	Jurisdiction	No of Bids	Bidders (<u>Low Bid in Bold Underline</u>), <i>DBE Firms in Italic</i>	Price of Curb Ramp (Low Bid)
2023	City of San Jose (10350)	5	<u>Rosas Brothers Construction (Oakland)</u> Wattis Construction Co. Inc <i>Duran Construction Group</i> Spencon Construction <i>JJR Construction, Inc.</i>	\$5300
2023	City of San Jose (10351)	5	<u>Spencon Construction</u> <i>Rosas Brothers Construction (Oakland)</i> Wattis Construction Co. <i>Duran Construction Group</i> <i>JJR Construction, Inc.</i>	\$5400
2023	City of San Jose (10352)	5	<u>Wattis Construction Co</u> <i>JJR Construction Inc</i> Spencon Construction <i>Rosas Brothers Construction (Oakland)</i> <i>Duran Construction Group</i>	\$5400
2023	City of San Jose (10353)	5	<u>Spencon Construction</u> Wattis Construction Co <i>JJR Construction Inc</i> <i>Rosas Brothers Construction (Oakland)</i> <i>Duran Construction Group</i>	\$5250
2023	City of San Jose (10354)	5	<u>Duran Construction Group</u> <i>Rosas Brothers Construction (Oakland)</i> <i>JJR Construction, Inc.</i> Wattis Construction Co. Inc Spencon Construction	\$5250

Overall, contractors bidding on projects in nearby cities could reasonably be assumed to be part of the broader pool of available contractors for Oakland projects. The number of contractors with headquarters in the East Bay that routinely bid on neighboring cities' construction projects demonstrates a pool of contractors that could bid on Project 1006308 if L/SLBE program requirements were waived. Waiving L/SLBE requirements would tap into a larger East Bay contractor pool for curb ramp construction, potentially increasing competition and improving contractor availability.

As **Table 5** summarizes below, Oakland sees on average fewer than 3 bids per curb ramp project. This is significantly lower than the Bay Area average of 6 bids per project. Additionally, Oakland is paying more per curb ramp, with an average ramp price nearly \$1,500 more than Bay Area average. Waiving L/SLBE requirements and expanding the bidder pool could help improve competition and support lower unit prices, which would mean more work could be completed with less money. If curb ramp bid prices on Project 1006308 matched the Bay Area average instead of the current Oakland average, the City could construct an additional 75 curb ramps.

Table 5: Summary of Findings

	AVERAGE BIDS PER CURB RAMP PROJECT	AVERAGE UNIT PRICE PER CURB RAMP
OAKLAND	2.3	\$6350
OTHER BAY AREA CITIES	6.0	\$4900

Concurrently, staff of OakDOT, DWES, and EWD are evaluating avenues to increase the number of Oakland certified businesses with curb ramp construction practices. Actions include identifying the challenges for small businesses in developing new construction practices, maintaining office space in Oakland, and workforce availability; anticipated engagement with the City of Oakland’s Small Construction Contractor Assistance Program; a Request for Qualifications for Small Sidewalk Reconstruction that OakDOT plans to advertise this spring, aimed to create a pre-qualified pool of concrete contractors that would receive sidewalk reconstruction jobs on rotational basis and which could utilize a new small business loan program for contractors; and engagement with the Northern California Cement Masons, Local 300.

Alternatives

If the City Council were to reject the recommended contract authorization, staff would proceed with the bid process for Project 1006308 and return to City Council later in the spring to seek award. This would not streamline contract award and execution. Construction would not begin until summer 2024, and it would mean that in fiscal year (FY) 2024, no Curb Ramp CIP funds would be expended on curb ramp construction.

If City Council were to reject the recommended waiver of L/SLBE program requirements, the project would be bid under existing L/SLBE program requirements and typical compliance analysis of the bids would be performed following bid opening. If no bids were found to be responsive to the L/SLBE program requirements, staff would return to City Council later in the spring to seek authorization to negotiate on the open market. This also would not streamline contract award and execution and would similarly mean that no Curb Ramp CIP funds would be expended on curb ramp construction in FY 2024.

FISCAL IMPACT

The total one-time cost to implement Project 1006308 Citywide Curb Ramps 2024-2025 is available in Fund 5335 (Measure KK), Organization 92246 (Engineering Design Streets and Structures), Project No. 1006308.

PUBLIC OUTREACH / INTEREST

For this construction solicitation, Oakland Department of Transportation Great Streets Delivery Division (OakDOT-GSD) worked with Oakland Public Works-Capital Contracts Division (OPW-CCD) and Department of Workplace and Employment Standards (DWES) to conduct public outreach through the legal ads, enhanced notifications, and a pre-proposal meeting.

Notifications of solicitations were distributed by several means: the City's iSupplier system, which is utilized to notify registered contractors, plan rooms and builder's exchanges, regional trade and business groups, including the Oakland Metropolitan Chamber of Commerce, Oakland Black Board of Trade & Commerce, Bay Area Business Roundtable, and the Construction Bid board. Companies are granted access to review proposals in iSupplier a few days after registering in this system. Vendors can also sign up to receive automatic notifications from the system whenever the City issues an RFP/Q or NIB for projects with a specific NAICS code.

In addition to iSupplier and the established disparity outreach list, OPW-CCD also utilizes CIPList.com, a free website through which agencies can announce and distribute solicitations. Through CIPList.com, any company or entity may register to be automatically notified of all City of Oakland solicitations without restrictions.

The legal notice for the solicitation was advertised on February 23, 2024. Legal notices were printed in the East Bay Times and Oakland Post. In addition, information about the project was published in El Mundo, Daily Pacific Builder, World Journal, and the Korea Times publications.

OPW-CCD held a pre-bid meeting in partnership with DWES and the Project Manager on March 5, 2024, with prospective bidders in attendance virtually. The purpose of the meeting was to discuss with potential contractors how contracts are established with the City, answer any compliance questions, and to discuss the current RFB solicitation specifically.

COORDINATION

The work to be contracted has been coordinated with DWES and appropriate divisions within OakDOT. In addition, this report and the resolution have been reviewed for form and legality by the Office of the City Attorney and Budget Bureau of the Finance Department.

SUSTAINABLE OPPORTUNITIES

Economic: Implementation of the Project will generate business tax, sales tax, and other revenues for the City by those firms who work on the project.

Environmental: The contractor will be required to make every effort to use best management practices for the protection of storm water runoff during construction.

Race & Equity: Curb ramp construction will make the City more accessible to those with disabilities, thus preventing potential harm to citizens and reducing trip and fall claims.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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 A Resolution Authorizing The City Administrator To Award A Construction Contract To The Lowest Responsive And Responsible Bidder, In Accordance With Project Plans And Specifications For Project No. 1006308 Citywide Curb Ramps 2024-2025, And With The Contractor's Bid That Includes Base Bid And Partial Or All Optional Items, For An Amount Not To Exceed Three Million, Three Hundred and Ten Thousand Dollars (\$3,310,000.00); Adopting Appropriate California Environmental Quality Act Findings; and Waiving Local/Small Local Business Enterprise Program Requirements.

Respectfully submitted,

Fred Kelley

Fred Kelley (Feb 28, 2024 13:38 PST)

FRED KELLEY

Director, Oakland Department of Transportation

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Attachment (1):
A. Project Bid Request