



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Loesch  
John Ristow

**SUBJECT:** SEE BELOW

**DATE:** May 30, 2023

Approved

Date

6/7/23

**COUNCIL DISTRICTS: 5 & 8**

**SUBJECT: REPORT ON BIDS AND AWARD OF CONTRACT FOR 8824 – MT. PLEASANT PEDESTRIAN & BIKE TRAFFIC SAFETY IMPROVEMENTS, FEDERAL PROJECT NO. CML-5005(156)**

## RECOMMENDATION

- (a) Report on bids and award of a contract for the construction of 8824 – Mt. Pleasant Pedestrian & Bike Traffic Safety Improvements Project to the lowest responsive, responsible bidder, Redgwick Construction Company, in the amount of \$1,488,500; and
- (b) Approve a 10% contingency in the amount of \$148,850.

## SUMMARY AND OUTCOME

This project, with funding provided by the Santa Clara Valley Transportation Authority and local matching fund, will improve safety for pedestrians and bicycles on various routes leading to seven schools in the Mt. Pleasant area. Three bids were submitted; however, the lowest bid failed to provide adequate information to meet the grant requirement and was deemed non-responsive.

The award of the contract to Redgwick Construction, Company enables the 8824 – Mt. Pleasant Pedestrian & Bike Traffic Safety Improvements Project to proceed. Approval of a 10% contingency will provide funding for any unanticipated work that may be necessary for the proper completion or construction of the project.

## BACKGROUND

In 2017, the Department of Transportation submitted a grant application to the Santa Clara Valley Transportation Authority’s FY 2018-2022 Vehicle Emissions Reductions Based at Schools grant program for the Mt. Pleasant Pedestrian and Bicycle Traffic Safety Improvement Project.

The project proposes to install pedestrian and bike traffic safety improvements on direct routes to seven schools around the Mt. Pleasant area. The project scope includes constructing missing sections of the sidewalk, park strip with trees, bulb-outs, streetlights, roadway signs, and pavement markings along Mt. Pleasant Road. The project will also upgrade and install new sidewalk curb ramps at various locations. Additionally, new bike racks will be installed at Ocala Steam Academy Middle School, Adelante Dual Language Academy, Mt. Pleasant High School, August Boeger Middle School, and Robert Sander Elementary School. (See **Attachment A - Location Map – Mt. Pleasant Pedestrian & Bike Safety Improvements Project.**)

The total amount approved through the Vehicle Emissions Reductions Based at Schools grant was \$1,000,000 for the design and construction phases of the project. The City is contributing a local match of \$260,000 and additional City funds of up to \$1,550,000 for a total project budget of up to \$2,810,000. On January 23, 2023, the California Department of Transportation approved the City’s Request for Authorization (E-76) to proceed with construction.

Construction is tentatively scheduled to begin in September 2023 with substantial completion in January 2024.

**ANALYSIS**

Bids were opened on April 6, 2023 with the following results:

<b><u>Contractor</u></b>	<b><u>City</u></b>	<b><u>Bid Amount</u></b>	<b><u>Variance Amount</u></b>	<b><u>Over/(Under) Percent</u></b>
Wattis Construction Company, Inc. (non-responsive)	San José	\$1,372,980	(\$218,020)	(14)
Redgwick Construction Co.	Oakland	\$1,488,500	(\$102,500)	(6)
Sposeto Engineering, Inc. (non-responsive)	Livermore	\$1,544,190	(\$46,810)	(3)
<b>Engineer’s Estimate</b>	--	<b>\$1,591,000</b>	---	---

Per California Department of Transportation requirements, the three lowest bids are subject to Disadvantaged Business Enterprise (DBE) and good faith effort review by the City’s Office of Equality Assurance. The Office of Equality Assurance determined that the bid submitted by Wattis Construction Company, Inc. did not meet the required DBE goal, nor made sufficient good faith efforts towards meeting the DBE goals, and provided Wattis Construction Company, Inc. with an opportunity for an Administrative Reconsideration Hearing to provide additional documentation and information regarding good faith efforts to meet the DBE goal. Wattis Construction Company, Inc. declined the Administrative Reconsideration Hearing. As such, the bid was deemed non-responsive. The bid submitted by Sposeto Engineering, Inc. was also

deemed non-responsive for failing to submit the DBE and good faith effort supporting documentation required by the California Department of Transportation.

The bid submitted by Redgwick Construction Company was 6% under the Engineer's Estimate and considered reasonable for the work involved in the project. The lower-than-estimated bid can be attributed to a competitive bidding environment as well as the contractor's familiarity with this type of work.

Redgwick Construction Company has completed multiple public works projects for several local agencies, including the Highway 1 Safety & Operational Improvements Project and the Foothill Expressway Operational Improvements Project. Redgwick Construction Company has also completed The Alameda-A Plan for The Beautiful Way Project – Phase II for the City of San José.

San José Municipal Code Section 27.04.050 provides for a standard contingency of 10% on all public works contracts except those involving the renovation of a building or buildings. The standard 10% contingency is appropriate for this project.

### **DBE Program Requirements**

Per Federal Regulations, Title 49 CFR Part 26, a DBE goal of 17% was established for this project. Redgwick Construction Company committed \$438,382 (29%) in DBE participation. (See **Attachment B** - DBE Analysis Memo – Mt. Pleasant Pedestrian & Bike Safety Improvements Project.)

### **Local and Small Business Outreach**

In addition to soliciting DBE participation per Caltrans requirements, Procurement staff used Biddingo to reach out to local and small business enterprises. Chapter 4.12 of the San José Municipal Code defines a "local business enterprise" as one with a legitimate business presence in Santa Clara County. A "small business enterprise" is a local business enterprise with 35 or fewer employees. Procurement staff sent bid invitations to 11,123 vendors, and 15 vendors downloaded documents, approximately one of which was located within Santa Clara County and considered a local business enterprise. The recommended contractor is not a local or a small business enterprise. However, one local business enterprise is listed as a subcontractor. Bear Electrical (San José) will perform electrical work valued at \$98,951.

### **Project Labor Agreement Applicability**

The City's Project Labor Agreement is applicable to this project because the Engineer's Estimate is over \$1.2 million. The Federal Highway Administration also authorized the implementation of a Project Labor Agreement for this project.

**EVALUATION AND FOLLOW-UP**

No additional follow-up action with the City Council is expected.

**COST SUMMARY/IMPLICATIONS**

This project has no fiscal impact since the Department of Transportation has already budgeted for the operation and maintenance of the improvements.

1.	AMOUNT OF RECOMMENDATION/COST OF PROJECT:	
	Project Delivery*	\$ 1,162,746
	Construction	\$ 1,488,500
	Contingency	\$ 148,850
	<b>TOTAL PROJECT COSTS</b>	<b>\$ 2,800,096</b>
	Prior Cost Expenditures (through April 2023)	(\$ 733,238)
	<b>REMAINING PROJECT COSTS</b>	<b>\$ 2,066,858</b>

\*Project Delivery includes \$733,238 for Design Services and \$429,508 for Construction Management and Inspection Services.

2.	COST ELEMENTS OF AGREEMENT/CONTRACT:	
	Temporary Traffic Control and other Misc. Work	\$ 250,135
	Demolition and Earthwork	\$ 105,040
	Concrete and Paving	\$ 561,270
	Curb Ramps and Bike Racks	\$ 326,100
	Storm, Landscaping, Signage, and Striping Work	\$ 138,260
	Electrical	\$ 107,695
	<b>TOTAL AGREEMENT/CONTRACT AMOUNT</b>	<b>\$ 1,488,500</b>

3. SOURCE OF FUNDING: 465 – Mt. Pleasant Schools Bike/Pedestrian Safety Improvements

**BUDGET REFERENCE**

The table below identifies the fund and appropriations to fund the contract recommended as part of this memorandum and the remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2022-2023 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
465	405R	Mt. Pleasant Schools Area Bike/Pedestrian Safety Improvements	\$2,154,000	\$1,488,500	1008	10/18/2022 Ord. No. 30833

**COORDINATION**

This memorandum has been coordinated with the City Attorney’s Office, the City Manager’s Budget Office, and the Department of Planning, Building and Code Enforcement.

**PUBLIC OUTREACH**

This memorandum will be posted on the City’s Council Agenda website for the June 20, 2023 City Council meeting.

**COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

**CEQA**

Categorically Exempt, File No. ER23-009, Exempt pursuant to CEQA Guidelines Section 15301(c), Existing Facilities.

HONORABLE MAYOR AND CITY COUNCIL

May 30, 2023

**Subject: Award of Contract for 8824 – Mt. Pleasant Pedestrian & Bike Traffic Safety Improvements**

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**PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/  
MATT LOESCH  
Acting Director of Public Works

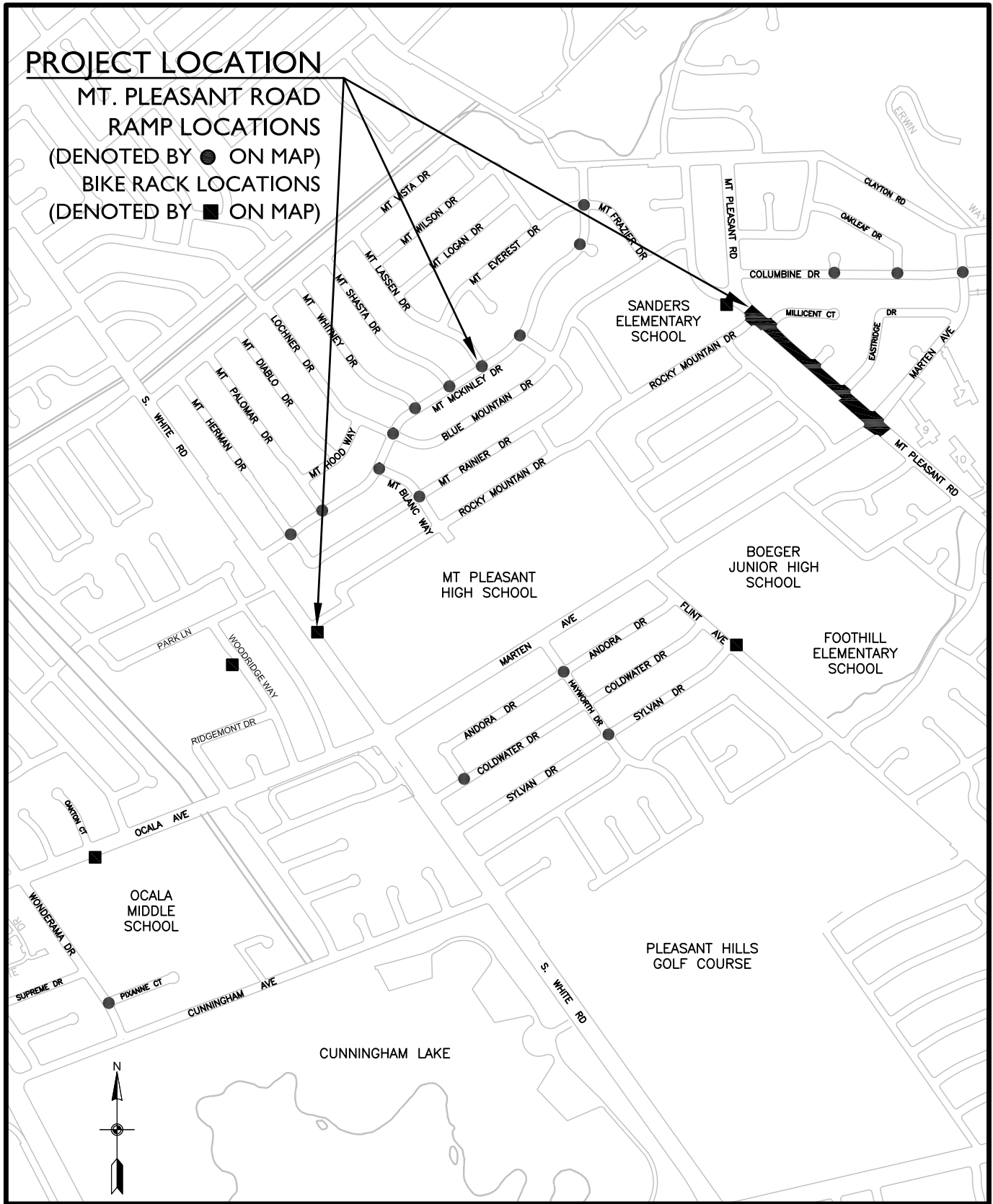
/s/  
JOHN RISTOW  
Director of Transportation

For questions, please contact Mathew Nguyen, Deputy Director, Public Works Department, at (408) 535-8300.

**ATTACHMENT:**

Attachment A - Location Map – Mt. Pleasant Pedestrian & Bike Safety Improvements Project

Attachment B - DBE Analysis Memo – Mt. Pleasant Pedestrian & Bike Safety Improvements Project



# 8824 - MT. PLEASANT PEDESTRIAN & BIKE TRAFFIC SAFETY IMPROVEMENTS LOCATION MAP



# Memorandum

**TO:** Matt Loesch

**FROM:** Christopher Hickey

**SUBJECT:** 8824- *MT. PLEASANT PEDESTRIAN  
& BIKE TRAFFIC SAFETY  
IMPROVEMENTS*

**DATE:** April 17, 2023

## **BACKGROUND**

### ***A. US Department of Transportation Disadvantaged Business Enterprise Program***

The US Department of Transportation (USDOT) provides funds each year to finance construction of various transportation projects initiated by state and local governments, public transit and airport agencies. To receive USDOT funds, local agencies must comply with the requirements of Title 49 CFR 26, entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs” (DBE Program). The primary objective of the DBE Program is to level the playing field by providing small businesses owned and controlled by socially and economically disadvantaged individuals a fair opportunity to compete for federally funded transportation contracts.

Caltrans, as a recipient of USDOT funds, must comply and implement the DBE Program. The City of San Jose is a sub-recipient of USDOT funds from Caltrans and must comply with the DBE Program as implemented by Caltrans.

Participation in the DBE Program does not violate Section 31 of Article 1 of the California Constitution (prohibiting discrimination against, or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity or national origin) because such participation is required to maintain eligibility for a federal program.

### ***B. USDOT DBE Program Requirements***

Under the DBE Program, a contractor bidding on a USDOT-funded transportation project must document one of the following to be eligible for award of the construction contract:

1. That it has sufficient commitments for participation by “disadvantaged business enterprises” to meet a pre-established goal for the specific contract (DBE Goal); or
2. If it does not have sufficient commitments to meet the DBE Goal, that it made “good faith efforts” to achieve the goal.



## 1. Determining the DBE Goal for a Contract

In very general terms, the DBE Goal for a construction contract is determined by what work items will be typically performed by the prime contractor, what work items can be subcontracted out, identifying work items that can be subcontracted to DBEs, identifying the number of available DBE subcontractors from the California Unified Certification Program DBE database, calculating the “DBE Work Dollar Amount,” and determining the “Percentage DBE Work.” The specific procedures that Caltrans requires local agencies to use to determine an appropriate DBE Goal for a specific contract can be found at <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/ob/2019/ob19-03.pdf>.

## 2. Determining Good Faith Efforts

If the low bidder does not meet the DBE Goal for the project, the USDOT regulations instruct that the local entity must make a “fair and reasonable judgment” whether the bidder made “good faith efforts” to achieve the goal. The local entity must consider the “quality, quantity and intensity” of the efforts made by the bidder. USDOT regulations state that good faith effort determinations “should not be made using quantitative formulas.”

USDOT regulations set a high bar for achieving good faith efforts, stating that “mere pro forma efforts are not good faith efforts. . . .” The regulations define good faith efforts as meaning “that the bidder must show it took all necessary and reasonable steps” to achieve the DBE Goal. The bidder’s efforts “should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal.” A list of the kind of efforts that a local entity must consider in determining whether a bidder achieved “good faith efforts” can be found at <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/ch09.pdf>

### *C. Caltrans Procedures for Complying with the DBE Program*

In accordance with the DBE Program, Caltrans is required to submit an overall DBE Goal methodology every three years to USDOT for approval. The overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate in USDOT-assisted contracts. The goal must reflect the determination of the level of DBE participation one would expect absent the effects of discrimination.

The Caltrans submittal was in accordance with the DBE requirements outlined in 49 CFR 26.47(c). These steps are necessary because greater coordination of the contract goal setting is needed in order for Caltrans to meet its overall goal. Additionally, Caltrans’ Good Faith Effort process review showed that local agencies consistently awarded contracts to the low bidder regardless of the adequacy of the Good Faith Effort.

Caltrans proposed that the Division of Local Assistance (“DLA”) initiate a pilot study to ***independently review and approve*** all local agency contract goals on construction contracts over \$2,000,000. In addition, if these construction contracts are awarded on the basis of a Good Faith

Effort, the local agency must submit the bidder's Good Faith Effort and the local agency's analysis of these efforts to Caltrans for review and comment. Caltrans will review and provide feedback to the local agency on the bidder's Good Faith Effort. If, following this process, the local agency finds that the bidder's Good Faith Effort is inadequate, the local agency must provide the bidder with an opportunity for administrative reconsideration before awarding the contract to another bidder.

If the construction contract is less than \$2,000,000, Caltrans does not independently review and approve the local agency's contract DBE goal or review the local agency's analysis of the low bidder's Good Faith Effort.

On March 6, 2014, the FHWA approved the pilot study. The pilot study has since concluded, but the requirements continue in effect and have been incorporated into Caltrans' DBE procedures.

### ***8824- Mt. Pleasant Pedestrian & Bike Traffic Safety Improvements***

Monterey Road is an important north-south corridor that connects South San Jose and Downtown San Jose and serving many key areas in between. Through the rigorous evaluation and analysis of crash data, Monterey Road was identified as one of the 17 major street corridors that has the highest frequency of fatal and severe injuries of people walking, bicycling, motorcycle riding, and driving. As a result, Monterey Road has been classified as one of San Jose's Priority Safety Corridors which has a clear need for improvements. The project will provide safety improvements through the upgrade of existing guardrails that are damaged and not up to current standards along the 9-mile long stretch of Monterey Road.

The project scope includes proposed improvements such as, but not limited to: upgrading approximately 2.7 miles of existing guardrails to conform with current standards along Monterey Road between Cottle Road and Metcalf Road and proper disposal of treated wood waste resulting from the removal of the existing guardrails at a California disposal site operating under a Department of Toxic Substances Control permit.

The engineer's estimate for the project was \$1,372,980. The project is receiving USDOT funds and is, therefore, required to comply with the DBE Program.

In accordance with Caltrans' procedure for calculating DBE Goals, Caltrans approved a DBE goal of 13% for ***8824- Mt. Pleasant Pedestrian & Bike Traffic Safety Improvements***.

The project was advertised on Biddingo on March 15, 2023 and the bid opening was April 6, 2023. Three bids was received at 3 p.m. on April 6, 2023:

<b>BIDDER</b>	<b>AMOUNT</b>
Wattis Construction	\$1,372,980.00
Redgwick Construction	\$1,488,500.00
Sposeto Engineering Inc.	\$1,544,190.00

**ANALYSIS**

*A. Low Bidder did not meet DBE Goal.*

Following the opening of bids on April 6, 2023 Public Works staff provided the bid package of the three responsive bidder to the Labor Compliance Division for review of their respective Exhibit 12-B Bidder’s List of Subcontractors (DBE and Non-DBE). In accordance with Local Assistance Procedures Manual (LAPM), bidders must submit completed Exhibit 15-G Construction Contract DBE Commitment & DBE Quotes and Exhibit 15-H DBE Information-Good Faith Efforts (if applicable) within five (5) days of bid opening, which in this case was no later than 4:00 pm on Tuesday, April 11, 2023.

The Low and Second Low bidders submitted completed Exhibit 15-H DBE Information by April 11, 2023. Sposeto Engineering Inc. declined to submit Exhibit 15-G and Exhibit 15-H documents and were removed from consideration.

Based on the Exhibit 15-G Construction Contract DBE Commitment & DBE Quotes submitted by the bidders, the Labor Compliance Division determined the following with regard to the DBE Goal:

BIDDER	DBE COMMITMENT	
	Percentage	Dollars
Wattis Construction	2.04%	\$28,000.00
Redgwick Construction	29.45%	\$438,382.00

The Low bidder, Wattis Construction, did not meet the established 13% DBE goal. Its eligibility to be awarded the contract for the project depends on whether it used “good faith efforts” to meet the DBE Goal. If not, then the low bidder is non-responsive and the contract must be awarded to the next responsive and responsible low bidder.

*B. The Low Bidder did not Demonstrate “Good Faith Efforts” to Meet the DBE Goal*

In analyzing whether Wattis Construction demonstrated “good faith efforts,” the Labor Compliance Division is cautioned against accepting mere pro forma efforts. The Labor Compliance Division must carefully analyze the *quality, quantity and intensity* of Wattis Construction’s efforts to determine if they took all necessary and reasonable steps to achieve the DBE Goal. It must determine if Wattis Construction’s efforts are what one reasonably would expect from a bidder *actively and aggressively* trying to meet the DBE Goal for the project.

In determining whether a bidder made “good faith efforts,” the Labor Compliance Division, per federal regulations, may take into account the performance of the other bidders in meeting the DBE contract goal. An apparent low bidder’s failure to meet a DBE contract goal when other bidders met the goal is evidence that the apparent low bidder could have met the goal had it availed itself of reasonable efforts.

The *second* low bidder, Redgwick Construction Co., significantly exceeded the DBE goal. Redgwick Construction Co. achieved 29.45% (\$438,382.00) DBE.

Based on the documents submitted by Wattis Construction and Redgwick Construction, the Labor Compliance Division finds that Wattis Construction performed less outreach and solicitation to DBE certified firms through publication notification, direct e-mails and telephone calls, and provided less scope of work opportunities than Redgwick Construction. Examples are as follows:

- Wattis Construction advertised in three (3) DBE publications beginning on March 29, 2023 (one week prior to bid opening), whereas Redgwick Construction advertised in three (3) DBE publications beginning on March 20, 2023 (two weeks prior to bid opening)
- Wattis Construction directly contacted thirty (30) DBE certified firms, whereas Redgwick Construction directly contacted sixty (60) DBE certified firms
- Wattis Construction made available 18% or \$247,471 of work items to DBE firms, whereas Redgwick Construction made available 100% or \$1,488,500 of work times to DBE firms

This suggests to the Labor Compliance Division that had Wattis Construction taken any necessary and reasonable steps to achieve the DBE Goal, it would have succeeded in doing so. Wattis Construction's lack of obtaining any DBE commitments supports the conclusion that it made little, if any, efforts – let alone “good faith” efforts.

Based on all of the above information, the Labor Compliance Division concludes that Wattis Construction did not take *any necessary nor reasonable steps* to achieve the DBE Goal and did not engage in any of the efforts one reasonably would expect from a bidder *actively and aggressively* trying to meet the DBE Goal. In short, the Labor Compliance Division concludes that Wattis Construction did not demonstrate “good faith efforts” to meet the DBE Goal and the bid should be rejected. The Second low bidder, Redgwick Construction, exceeded the DBE goal of 13% and should be awarded the construction contract.

## **CONCLUSION**

For the above reasons, the Labor Compliance Division recommends the following:

- Rejecting Wattis Construction's bid on the grounds that Wattis Construction did not meet the DBE Goal and failed to demonstrate “good faith efforts” to meet the goal; and
- Awarding the construction contract to Redgwick Construction Co., which met and exceeded the DBE Goal.

In accordance with 49 CFR 26.53(d), Wattis Construction must be offered an opportunity for an administrative reconsideration hearing at which it can argue that the information it presented as part of its bid established “good faith efforts.” The result of the reconsideration is not administratively appealable to Caltrans.