



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano
John Ristow

SUBJECT: SEE BELOW

DATE: February 16, 2021

Approved

Date

2/18/2021

COUNCIL DISTRICT: 5

**SUBJECT: AWARD OF CONTRACT FOR THE 9664 – EAST SAN JOSE BIKEWAYS –
SIGNS AND SHARROWS PROJECT, FEDERAL PROJECT NO. CML-
5005(145)**

RECOMMENDATION

Report on bids and award of construction contract for the 9664 – East San Jose Bikeways – Signs and Sharrows Project to the low bidder, Chrisp Company, in the amount of \$527,774, and approval of a 10 percent contingency in the amount of \$52,777.

OUTCOME

Award of the construction contract to the low bidder will enable the East San Jose Bikeways – Signs and Sharrows project to proceed. Approval of the 10 percent contingency will provide funding for unanticipated work that may be necessary for the proper completion of the project.

BACKGROUND

The City of San José Department of Transportation (DOT) routinely applies for federal grant funding to advance the goals and objectives of our General Plan. In August 2018, Caltrans approved Construction funding for the East San Jose Bikeways project. City was awarded \$2M in Federal Congestion Mitigation Air Quality (CMAQ) funds from the One Bay Area Grant (OBAG) program.

The East San Jose Bikeways – Signs and Sharrows Project will enhance bicyclist safety and calm traffic on various streets in East San Jose (see attached location map). Specifically, the project will install approximately 30 miles of on-street bikeways, 1,804 Sharrow markings, and 487 signs.

Construction is scheduled to begin in June 2021 with completion expected in August 2021.

ANALYSIS

On November 5, 2020, a total of two bids were received with the following results:

<u>Contractor</u>	<u>Bid Amount</u>	<u>Variance Amount</u>	<u>Over/(Under) Percent.</u>
Chrisp Company (Fremont)	\$527,774	(\$4,096)	(1)
Engineer's Estimate	531,870	--	--
Sterndahl Enterprises, Inc. (Sun Valley)	850,420	318,550	60

The low bid submitted by Chrisp Company is \$527,774 which is 1% under the Engineer's Estimate. Staff considers this bid reasonable and recommends awarding the contract to Chrisp Company.

The general contractor has worked with the City on similar projects previously and is familiar with this type of project.

San José Municipal Code Section 27.04.050 provides that the contingency for all public works contracts (except those involving the renovation of a building or buildings) cannot exceed 10% of the total contract amount. Staff recommends a 10% contingency, which should be sufficient to account for unforeseen conditions that might arise during construction.

DBE Program Requirements

As a recipient of federal highway funds, the City 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 provide small businesses owned and controlled by socially and economically disadvantaged individuals a fair opportunity to compete for federally-funded transportation contracts. Under the DBE Program, a contractor bidding on a federally-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 by taking all "necessary and reasonable steps" to do so.

In accordance with the Federal Regulations, Title 49 CFR Part 26, a DBE goal of 17% was established for this project.

Chrisp Company committed to \$52,000 (9.8%) DBE participation. Because they did not meet the DBE participation goal, the City's Office of Equality Assurance (OEA) analyzed the contractor's efforts and concluded that the contractor used "Good Faith Efforts" to meet the DBE goal.

Bid Protest:

On December 10, 2020, Sterndahl Enterprises, Inc., submitted a protest of the City's intent to award the contract to Chrisp Company (Attachment D). Sterndahl asserts that Chrisp Company's bid failed to make a "good faith effort" to meet the DBE goal of 17%. Staff reviewed the protest and confirmed its determination that while Chrisp Company did not meet the DBE goal, it did demonstrate a "good faith" effort to do so. Title 49 CFR 26.53 entitled "What are the good faith efforts procedures recipients follow in situations where there are contract goals?" states that the City must award the contract only to bidder/offeror who makes good faith efforts to meet the established DBE contract goal. The bidder/offeror has made good faith efforts if the bidder/offeror either obtained enough DBE participation to meet the goal; or Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. In accordance with the Caltrans DBE determination process, the City determined that it should award the contract to Chrisp Company. See attached DBE determination memorandum (Attachment C).

Project Labor Agreement Applicability

A project labor agreement (PLA) is not applicable to this project as the engineer's estimate is under \$3,000,000.

Local and Small Business Outreach

Procurement staff used Biddingo to outreach to local and small business enterprises. Chapter 4.12 of the San Jose Municipal Code defines a "local business enterprise" as one with a legitimate business presence in Santa Clara County and "small business enterprise" as a local business enterprise with 35 or fewer employees. Procurement staff sent bid invitations to 5,860 vendors, and documents were downloaded by 20 vendors, approximately 4 of which were located within Santa Clara County and therefore local. The City of San Jose has a local business preference for minor public works projects; however, neither bidder was local or a small business enterprise.

CONCLUSION

As a result of the evaluation of bids and DBE Program Requirements, staff recommends the award of contract to Chrisp Company in the total amount of \$527,774 and approval of an approximate 10 percent contingency in the amount of \$52,777.

EVALUATION AND FOLLOW-UP

No additional follow up action with the Council is expected.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

To solicit contractors, this project was advertised on Biddingo.com on October 14, 2020 and advertised in San Jose Post Record. The complete bid package and project information for all Department of Public Works (DPW) construction projects are available on Biddingo.com for interested contractors, contractor organizations, and builders' exchanges.

During the planning phase for this project, outreach was conducted to the public in the project several times by DOT staff. Outreach included two community meetings at the Mayfair Community Center in 2014 and 2016, and a community meeting at the Alum Rock Youth Center in 2015. Additionally, DOT staff presented the project to the Council District 5 Leadership Group at the Alum Rock Library in 2015 as part of a presentation of several transportation projects in East San Jose. In 2015, DOT, along with the Silicon Valley Bicycle Coalition, hosted a public forum at SPUR San Jose on the City's bikeways network in East San Jose, including information on this project. All these events were well attended. Finally, in 2015, a community bike ride was held in 2015 along the project routes.

Staff and the contractor will continue public outreach to the affected neighborhoods and businesses prior to and during construction. This memorandum will be posted on the City's website for the March 2, 2021, City Council Agenda.

COORDINATION

This project and memorandum have been coordinated with, the City Attorney's Office, the City Planning, Building and Code Enforcement Department, and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

The project also aligns with the Transportation and Aviation Services CSA outcomes to provide viable transportation choices that promote a strong economy and to provide a transportation system that enhances community livability.

COST SUMMARY/IMPLICATIONS

1.	AMOUNT OF RECOMMENDATION/COST OF PROJECT: \$527,774	
	Project Delivery	\$ 191,000*
	Construction	527,774
	Contingency (10%)	<u>52,777</u>
	TOTAL PROJECT COSTS	\$ 771,551
	Prior Cost Expenditures	(42,456)
	REMAINING PROJECT COSTS	\$ 729,095

* Project Delivery includes \$41,000 for Design Services and \$150,000 for Construction Management and Inspection Services.

2.	COST ELEMENTS OF CONTRACT:	
	Striping	\$ 17,364
	Sharrows	315,700
	Signs	160,710
	Traffic Control	9,000
	Mobilization	<u>25,000</u>
	TOTAL AGREEMENT/CONTRACT AMOUNT	\$527,774

3. SOURCE OF FUNDING: 465 – Construction Excise Tax Fund

4. FISCAL IMPACT: The operating and maintenance costs of this project is estimated to be \$10,000 and will be factored into the 2021-2022 budget process.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the contract recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Current Total Appn	RC #	Amt. for Contract	2020-2021 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
465	7649	East San Jose Bike/Pedestrian Transit Connection (OBAG)	\$2,309,000	205525	\$527,774	V-637	10/20/2020, 30494

CEQA

Categorically Exempt, File No. PP18-029, CEQA Guidelines Section 15301(c), Existing Facilities

/s/

MATT CANO

Director of Public Works

/s/

JOHN RISTOW

Director of Transportation

For questions, please contact Michael O’Connell, DPW Deputy Director, at Michael.oconnell@sanjoseca.gov.

Attachment A: Location Map

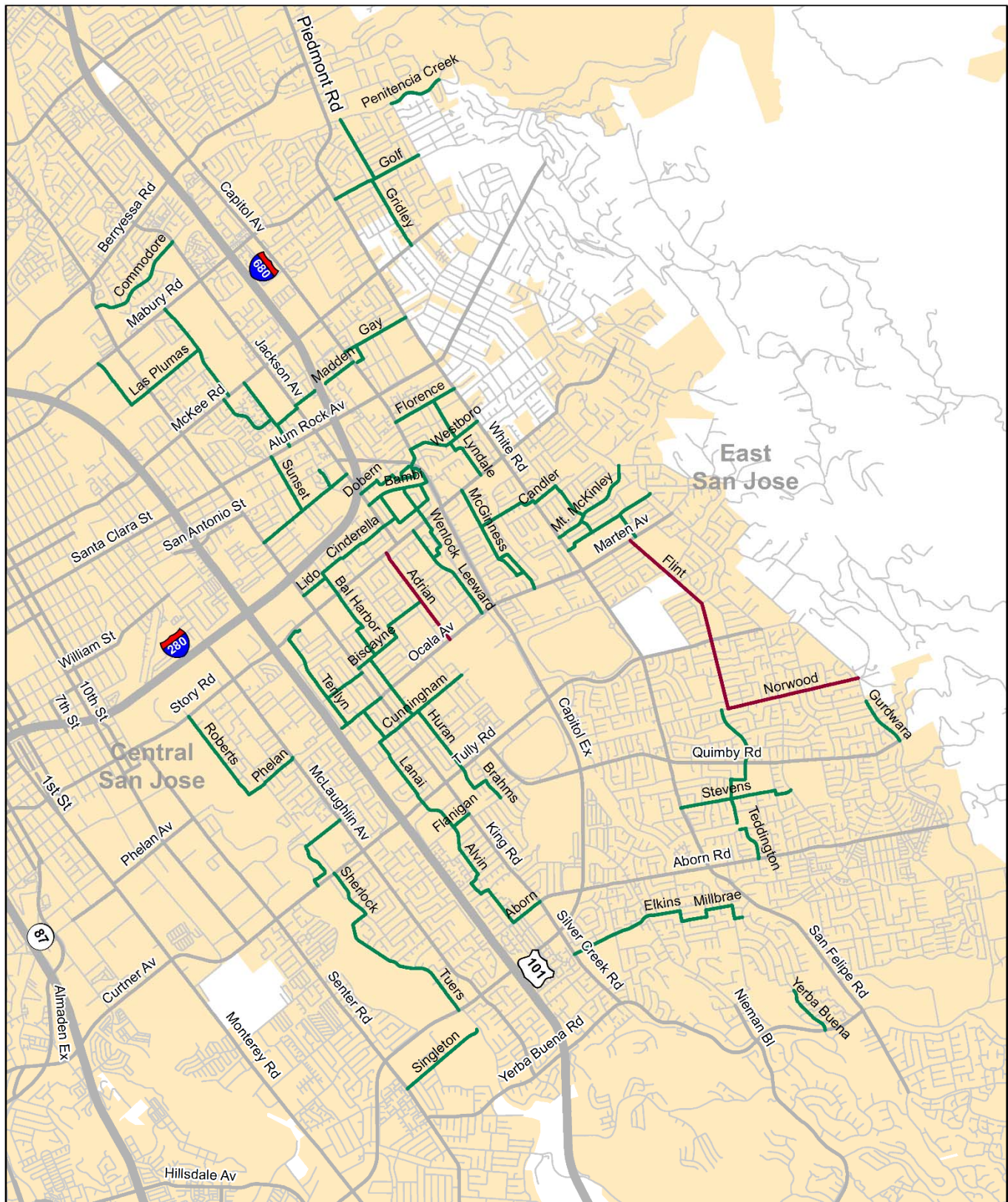
Attachment B: Categorically Exempt, File No. PP18-029, CEQA Guidelines Section 15301(c), Existing Facilities

Attachment C: DBE Determination Memo

Attachment D: Stendahl Enterprises Bid Protest Letter

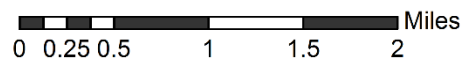
ATTACHMENT A

MAP



East San Jose Bikeways Project Location Map

- Signs Only
 Sharrows and Signs
 San Jose City Limits



STATEMENT OF EXEMPTION

FILE NO.

PP18-029

LOCATION OF PROPERTY

Citywide

PROJECT DESCRIPTION

Citywide, time limited, exemption for maintenance and improvements within the existing public right-of-way (ROW). Projects qualifies to use this exemption include 1) rehabilitation, maintenance, replacement, and repair project designed to improve the condition of existing transportation elements such as, but is not limited to, bikeways, ADA ramps, bike parking facilities, traffic signals, sidewalks, median islands, chokers, bulb-outs, traffic circles, speed humps, radar speed, display signs, traffic signs, or other similar elements, 2) re-paving and curb markings on existing streets, or 3) other similar maintenance, repair, rehabilitation, or replacement activities in the public ROW without changes to capacity of the existing streets.

Any changes to the capacity of an existing signalized intersection or street closures will required further environmental review and is not subject to this exemption. This exemption is limited to a five year time frame and will expire March 23, 2023.

CERTIFICATION

Under the provisions of Sections 15301(c) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

15301. EXISITING FACILITES

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

- (C) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety).

ANALYSIS

The project includes maintenance and/or improvement type of work to existing streets to enhance operations on the right-of-way (ROW). These type of improvement could include, but is not limited to installation of: bikeways, ADA ramps, bike parking facilities, new traffic signals, sidewalks, median islands, chokers, bulb-outs, traffic circles, speed humps, radar speed, display signs, traffic signs, or other similar features in the public ROW. These maintenance and/or improvement type of work would also include re-pavement and curb markings of existing streets without changes to capacity of the ROW. Work that would include changes to capacity on the existing roadways (i.e. reducing lanes) shall be subject to separate environmental review.

These maintenance and improvement activities will occur within the existing developed public ROW in locations that are already disturbed for development of existing roadways or trails. Therefore, no rare, threatened, endangered, or special status species of flora or fauna are known to inhabit the project areas. In addition, maintenance or improvement activities within the public ROW will not extend to structures or buildings that could be of historic value. The maintenance projects will comply with all applicable City's construction regulations and standards.

This project includes reconstruction and repair of existing streets and related facilities, and involves negligible or no expansion of the existing roadway uses. Therefore, the project qualifies for CEQA Guidelines Section 15301(c).

Exceptions:

CEQA Guidelines Section 15300.2 provides exceptions to the use of Categorical Exemptions where the use of a Categorical Exemption is prohibited under certain circumstances. The City has considered the projects applicability to all of the exceptions under Section 15300.2. An analysis of each of these exceptions in reference to this specific project is provided below.

- (a) Location. Section 15300.2(a) does not apply to the Class Category 1 of exemptions.
- (b) Cumulative Impact. The proposed project is for maintenance and improvement type of activities on existing, already disturbed, ROW with no further development and no changes to the capacity of the existing ROW. These types of works are to improve the operations of the existing streets, roadways, and pedestrian facilities. Based on the above analysis, there is no evidence of a potential significant cumulative impact on the environment from the proposed project. It has been determined that the project will not cumulatively impact traffic, noise, air quality, or water quality.
- (c) Significant Effect. The proposed project site does not have any unusual circumstances that would negatively impact the environment and would not result in any significant effects on the environment.
- (d) Scenic Highways. The project does not anticipate to result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. If work is to be damage the scenic resources such as trees or historic buildings, rock outcropping or similar sources within a highway official designated as a state scenic highway, this exemption cannot be used.
- (e) Hazardous Waste Sites. No work will occur in areas included on any list complied pursuant to Section 65962.5 of the Government Code. Work will be done within existing disturbed ROW.
- (f) Historical Resources. Physical work and changes will be done within existing ROW where no buildings are present. Structures within the ROW (i.e. street lights, traffic signs, and similar features) do not have historical values as it would not be on the historic inventory. Therefore, maintenance will not result in damages to any historic resources.

Thai-Chau Le
Environmental Planning Manager

ROSALYNN HUGHEY, Acting Director
Planning, Building and Code Enforcement

Date

3/29/18


Deputy



Memorandum

TO: Matt Cano

FROM: Christopher Hickey

SUBJECT: 9664- EAST SAN JOSE BIKEWAYS DATE: November 30, 2020
SIGNS AND SHARROWS

BACKGROUND

A. US Department of Transportation Disadvantaged Business Enterprise Program

The US Department of Transportation (USDOT) distributes substantial 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 are included in this Memorandum as Attachment “A.”

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” is attached to this Memorandum as Attachment “B.”

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.

In FFY 2013, Caltrans fell short of achieving its overall DBE Goal of 13.5% and was required to submit specific steps and milestones to the USDOT/Federal Highway Administration (“FHWA”) that would enable Caltrans to meet its overall DBE goal for FFY 2014. 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.

9664- East San Jose Bikeways- Signs and Sharrows

The East San Jose Bikeways- Signs and Sharrows project shall include approximately 40 miles of on-street bikeways 1,782 sharrow markings, 302 R4-11 signs, 240 D1-11 signs, and 24 miles of street repaving. The work consists of installation of signs, striping, and markings, cat-tracking, removal and/or relocation of existing post and signage, and protection of existing facilities.

The engineer’s estimate for the project was \$531,870.00. 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, the approved DBE goal of 17% for ***9664- East San Jose Bikeways- Signs and Sharrows was established*** .

The project was advertised on Biddingo on October 13, 2020 and the bid opening was on November 5, 2020. Two (2) bids were received at 3 p.m. on November 5, 2020.

BIDDER	AMOUNT	DBE Participation
Chrisp Company	\$527,774.00	9.8%
Sterndahl Enterprises, Inc.	\$850,420.00	18.3%

ANALYSIS

The Low Bidder Did Not Meet the DBE Goal for the Project.

Following the opening of bids on November 5, 2020, Department of Public Works staff provided the bid packages of the two bidders to the Labor Compliance Division on Friday November 6,

2020 for review of their Exhibit 12-B Bidder's List of Subcontractors (DBE and Non-DBE) forms. The Labor Compliance Division completed its review of the Exhibits on November 9, 2020. Both bidders, Chrisp Company and Sterndahl Enterprises, submitted Exhibit 15-G and 15-H documents prior to request.

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

BIDDER	DBE COMMITMENT	
	Dollars	Percentage
Chrisp Company	\$52,000.00	9.8%
Sterndahl Enterprises, Inc.	\$155,982.86	18.3%

Although the low bidder did not exceed the DBE goal, but the second low bidder exceeded the goal. Accordingly, the eligibility of the low bidder to be awarded the contract for the project depends on whether it used "good faith efforts" to meet the DBE Goal. If not, then their bids are non-responsive and the contract must be awarded to the second low bidder.

A. The Low Bidder Demonstrated "Good Faith Efforts" to Meet the DBE Goal

In analyzing whether Chrisp Company (Chrisp) 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 the bidder's efforts to determine if they took all necessary and reasonable steps to achieve the DBE Goal. It must determine if the bidder's efforts are what one reasonably would expect from a bidder *actively and aggressively* trying to meet the DBE Goal for the project.

An analysis of the *quality, quantity and intensity of efforts* made by Chrisp lead the Labor Compliance Division to conclude the efforts were, in total, were those one would reasonably expect from a bidder *actively and aggressively* trying to meet the DBE Goal for the project.

Chrisp's efforts to obtain DBE participation included the following:

- Notice and request for bids issued in five (5) publications, including Construction Bid Source, DBE Good Faith Trad Journal, and DBE Good Faith Twitter; and
- Direct solicitations from eighteen (18) contractors.

Based on all of the above information, the Labor Compliance Division concludes that Chrisp Company did take *all necessary and reasonable steps* to achieve the DBE Goal and did engage in 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 Chrisp Company did demonstrate "good faith efforts" to meet the DBE Goal and should be awarded 9664- East San Jose Bikeways- Signs and Sharrows

CONCLUSION

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

- Awarding the construction contract to Chrisp Company, which did not meet the DBE goal but demonstrated “Good Faith Efforts.”

In accordance with Federal Regulations, 49 CFR Part 26, a DBE goal of 17% was established for this project. Chrisp Company demonstrated good faith efforts to meet the 17% DBE goal and committed to \$52,000 (9.8%) DBE participation.

c Nuraddin Sadr



Profeit, Lauren

From: Denny Sterndahl <denny@sterndahl.com>
Sent: Thursday, December 10, 2020 1:52 PM
To: Profeit, Lauren
Cc: Hickey, Christopher; Chip@sterndahl.com
Subject: RE: NOTICE OF INTENT TO AWARD CONTRACT 9664 - East San Jose Bikeways - Signs and Sharrows
Federal Project No. CML-5005(145)

[External Email]

Laren,

I did read the DBE determination memo.

How can the City determine that Chrisp Company made a reasonable good faith effort to meet the goal, when both Chrisp Company and Sterndahl Enterprises Inc. utilized the same subcontractor for their DBE utilization.

Both Chrisp Company and Sterndahl Enterprises Inc. utilized KRC Safety for DBE participation. Both Companies used KRC safety for Traffic Control as DBE participation. However, just utilizing KRC Safety for traffic control does not meet the overall 17% DBE goal. Chrisp Company did not get any addition DBE participation.

Sterndahl realized that just the Traffic Control participation alone from KRC Safety would not be enough DBE participation to meet the 17% DBE goal. Sterndahl also requested that KRC Safety furnish and supply signs panels and sign posts from KRC Safety in order to meet the DBE goal of 17%.

It is unreasonable for the City to determine that Chrisp Company demonstrated good faith efforts that were actively and aggressively trying to meet the 17% DBE goal for the project. This becomes very apparent when the 2nd apparent low bidder Sterndahl Enterprises Inc. utilized the same DBE subcontractor for the same craft, but asked for addition participation from the same DBE KRC Safety in order to meet the 17% DBE goal. It seems to me that City just has accepted mere pro forma efforts.

How can you possibly claim that Chrisp Company made reasonable efforts to achieve the 17% goal and was only able to get 9.8% DBE participation, when Sterndahl used the same DBE contractor and was able to meet and exceed the 17% DBE goal established for this contract?

This bid proposal is still under protest, based on the above facts.

Regards,

Denny

Dennis R. Sterndahl
Vice President

From: lauren.profeit@sanjoseca.gov (Profeit, Lauren) [mailto:lauren.profeit@sanjoseca.gov]
Sent: Thursday, December 10, 2020 1:08 PM
To: Denny Sterndahl
Cc: Hickey, Christopher
Subject: RE: NOTICE OF INTENT TO AWARD CONTRACT 9664 - East San Jose Bikeways - Signs and Sharrows Federal Project No. CML-5005(145)

Mr Sterndahl,

Were you able to review the DBE determination memo prepared by our Office of Equality Assurance (OEA)? It was attached to the bid packages and included the City's determination that while Chrisp did not meet the DBE goal, it did make a good faith effort to do so.

As page 2 of the determination memo states: "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." OEA's analysis was that Chrisp's efforts "were those one would reasonably expect from a bidder actively and aggressively trying to meet the DBE Goal for the project."

If you have reviewed the memo and still wish to proceed with your protest, please let me know.

Best,
Lauren

Lauren Profeit
CIP Procurement
Public Works Department
(408) 535-8304

From: Denny Sterndahl <denny@sterndahl.com>
Sent: Thursday, December 10, 2020 12:58 PM
To: Profeit, Lauren <lauren.profeit@sanjoseca.gov>
Cc: 'Denny Sterndahl' <denny@sterndahl.com>
Subject: FW: NOTICE OF INTENT TO AWARD CONTRACT 9664 - East San Jose Bikeways - Signs and Sharrows Federal Project No. CML-5005(145)

[External Email]

Lauren,

I have reviewed the bid results and the notice of intent to award documents. I understand the City intends to award this project to Chrisp Company. I formally protest this award to Chrisp Company based on DBE goals not achieved, which makes the apparent low bidder's bid proposal non responsive.

Bid results:

Chrisp Company	\$527,774.00	DBE utilization 9.8%
Sterndahl Ent.	\$850,420.00	DBE utilization 18.3%

ATTACHMENT D

This project has a 17% DBE goal. Chrisp Company bid documents intends to utilize 9.8% DBE, which is far under the 17% DBE goal established for this project. They did not meet the DBE goal established for this project. The Chrisp Company bid proposal should be considered non-responsive for not meeting the established DBE goal. I did see they submitted good faith effort documentation to show they tried to meet the goal, however still did not meet the goal.

Sterndahl Enterprises Inc. submitted a bid proposal for this project as well. Sterndahl Enterprises Inc. bid proposal includes DBE participation of 18.3%, which exceeds the DBE established goal for this project.

If an apparent low bidder submits a bid proposal that does not meet the established DBE goal percentage and the 2nd apparent low bidder's bid proposal meets or exceeds the DBE goal percentage, the 2nd apparent low bidder takes over the apparent low bidder position.

If the apparent low bidder shows a good faith effort to support his DBE utilization which is still under the DBE goal established for the contract and the 2nd apparent low bidder meets the established DBE goals, it just shows the apparent low bidder did not try hard enough to meet the established DBE goal, regardless of his good faith effort documentation or not.

The only way an agency can accept a bid proposal with less than the established DBE goal percentage is when good faith efforts documentation is submitted, showing DBE utilization was attempted to meet the established goals and all bidders could not meet the established goals. For example, if 4 bids were received, the 1st, 2nd and 3rd apparent low bidders did not meet the established DBE goals, but the 4th apparent low bidder did meet the established DBE goals, then the 4th apparent low bidder will take over the apparent low bidder position.

Based on the facts above this project should be awarded to Sterndahl Enterprises Inc.

Please rescind the award to Chrisp Company and award this project to Sterndahl Enterprises. Inc.

Please accept this as a request for a responsibility hearing in accordance with San Jose Municipal Code Section 27.10.470 of this Chapter if the bidder is protesting a proposed determination that it is not a responsible bidder.

Regards,

Denny

Dennis R. Sterndahl
Vice President
Sterndahl Enterprises Inc.
818 612-4595
www.sterndahl.com