



Office of the City Manager

CONSENT CALENDAR
December 11, 2012

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Andrew Clough, Director, Public Works
Subject: Contract: Gallagher & Burk, Inc. for Street Rehabilitation FY 2013

RECOMMENDATION

Adopt a Resolution approving plans and specifications for the Street Rehabilitation FY 2013 Project, 13-10687-C; accepting the bid of Gallagher & Burk, Inc.; rejecting the bid protest of MCK Services, Inc., the second lowest bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed \$2,756,494.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in an allocation from the Street Capital Improvement Program budget. No other funding is required, and no other projects will be delayed due to this expenditure.

Low bid by Contractor	\$2,297,078
20% Contingency	\$459,416
Total construction cost	\$2,756,494

Budget Code:

State Transportation Tax Fund: 369-5212-431-6520-13ST01.....	\$276,199
Measure B Sales Tax: 391-5212-431-6520-13ST01	\$734,000
Storm Water: 831-5218-432-6550-13ST01	\$126,421
Capital Improvement Fund: 610-5212-431-6520-13ST01	\$1,619,874
Total construction cost	\$2,756,494

CMS No. QUNM3.

CURRENT SITUATION AND ITS EFFECTS

Various streets throughout the City are scheduled for repaving as part of the City's 5-Year Street Plan Process.

BACKGROUND

The project consists of rehabilitating approximately 15,850 linear feet of paved street, which were chosen for rehabilitation according to the 5-Year Street Plan Process. Storm

drainage design factors were also taken into consideration during project development. This large complex project requires contracted services, as the City does not possess the in-house labor or equipment resources to complete this repair project.

Project bids were opened on October 22, 2012 (Attachment 4, Abstract of Bids). One local and 4 non-local bids were received from a low of \$2,297,078 to a high of \$3,696,405. The apparent low bidder was Gallagher & Burk, Inc. of Oakland, California ("G&B").

On October 31, 2012, the City received a bid protest by the second lowest bidder, MCK Services, Inc. of Concord, California ("MCK"). MCK cited an unbalanced bid as a reason to reject G&B's bid as nonresponsive. MCK claimed that low unit pricing by G&B for Bid Item 3, Failed Area Repair, indicated an unbalanced bid. On November 1, 2012, the City forwarded to G&B the protest letter from MCK. G&B responded on November 5.

The City's bid specifications provide that an unbalanced bid may be grounds for rejection as unresponsive. An unbalanced bid must be both mathematically as well as materially unbalanced. A mathematically unbalanced bid is one containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs, which he/she anticipates for the performance of the items in question. An unbalanced bid will contain bid items for which prices are nominally low while others are inflated. A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost.

After evaluating the basis for the protest by MCK and G&B's response, staff determined that G&B's bid was not unbalanced. While G&B's bid item for Failed Area Repair was lower than the other bidders, there was not any other area that was unreasonably higher to make G&B's bid unbalanced. Staff evaluated the entirety of G&B's bid for conformance with the engineer's estimate and found it to be reasonable. There are no specific parameters in G&B's bid, such as amount or percent of variance from the engineer's estimate that constitute an unbalanced bid. There is not any reasonable doubt that award to G&B would result in the lowest ultimate cost. The City Attorney's office was consulted on this protest and after review of the matter, concurred with staff's determination. Therefore, it is recommended that the Council reject the bid protest of MCK Services, Inc., and award the contract for this project to the lowest responsive and responsible bidder, Gallagher & Burk, Inc.

The Living Wage Ordinance does not apply to this project, since Public Works construction contracts are, pursuant to City policy, subject to State prevailing wage laws. Gallagher & Burk, Inc. has submitted a Certification of Compliance with the Equal Benefits Ordinance. The Community Workforce Agreement applies to this project because the estimated value of the project exceeds \$1 million. As a result, the successful bidder and all subcontractors will be required to sign an agreement to be bound.

RATIONALE FOR RECOMMENDATION

This street repair project is part of the City's ongoing program to rehabilitate deteriorated streets throughout the City.

ALTERNATIVE ACTIONS CONSIDERED

No alternative action was considered for this pavement rehabilitation. This project went through a sequence of different stages including planning, coordinating with outside utility companies, preliminary cost estimates, field investigations, surveys, and extensive design prior to the implementation of the project.

CONTACT PERSON

Jeffrey L. Egeberg, Manager of Engineering, Public Works, 981-6400
Kenneth Emeziem, Supervising Civil Engineer, Public Works, 981-6444
Wendy Wong, Assistant Public Works Engineer, Public Works, 981-6428

Attachments:

- 1: Resolution
- 2: Location Map
3. 5-Year Street Plan Process
- 4: Abstract of Bids

RESOLUTION NO. ##,###-N.S.

CONTRACT: GALLAGHER & BURK, INC. FOR STREET REHABILITATION
FY 2013 PROJECT

WHEREAS, the Street Rehabilitation FY 2013 Project is part of the City's ongoing Street Capital Improvement Program to rehabilitate deteriorated streets located throughout the City; and

WHEREAS, the City has neither the labor nor the equipment necessary to undertake this Street Rehabilitation FY 2013 Project; and

WHEREAS, an invitation for bids was duly advertised and Gallagher & Burk, Inc. was the lowest responsive and responsible bidder; and

WHEREAS, the second low bidder, MCK Services, Inc., protested the bid by Gallagher & Burk, Inc., alleging that Gallagher & Burk's bid was unbalanced; and

WHEREAS, Gallagher & Burk, Inc.'s bid was not unbalanced; and

WHEREAS, funding is available in the current year budget in the Street Capital Improvement Program (Budget Codes: 369-5212-431-6520-13ST01, 391-5212-431-6520-13ST01, 831-5218-432-6550-13ST01, and 610-5212-431-6520-13ST01); and the contract has been entered into the Citywide contract database with CMS No. QUNM3.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specification No. 13-10687-C for the Street Rehabilitation FY 2013 Project are approved.

BE IT FUTHER RESOLVED that the Council of the City of Berkeley rejects the bid protest by MCK Services, Inc.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extensions or change orders, until completion of the project in accordance with the approved plans and specifications with Gallagher & Burk, Inc. for the Street Rehabilitation FY 2013 Project, in an amount not to exceed \$2,756,494, which includes a 20% contingency for unforeseen circumstances. A record signature copy of said agreement and any amendments to be on file in the Office of the City Clerk.

ATTACHMENT 2



STREET REHABILITATION FY 2018
LOCATION MAP

Street	From	To
4 th	Harrison	Gilman
4 th	Gilman	Cedar
9 th	N. City Limit	Cedar
Alcatraz	Baker	Sacramento
Cowper	San Pablo	Byron
Dwight	Shattuck	Telegraph
Hillside	Prospect	Dwight
Hillside Ct	Hillside	Dead End
Potter	3 rd (RR tracks)	9 th
Prospect	Hillside	Dwight
Sacramento	Ashby	S. City Limit
Woolsey	Telegraph	Hillegass

City of Berkeley Street Rehabilitation Program 5-Year Street Plan

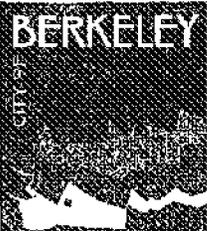
Berkeley maintains a rolling 5-Year Street Rehabilitation Plan for paving and reconstructing City streets. Due to the extensive coordination and design information that must be gathered, changes to early years of the existing plan are not feasible. City staff updates the plan on an annual basis for timeline changes in coordinated projects and for addition of a new fifth year. The plan is then presented to the Public Works Commission, which recommends it to City Council for adoption.

The 5-Year Plan is generated with the aid of a computerized Pavement Management System developed by the Metropolitan Transportation Commission. The Pavement Management System uses the following criteria:

1. Street pavement condition
2. Type of repair required
3. Road classification, e.g., arterial, collector, or residential
4. Cost effectiveness
5. Budget constraints

The Street Rehabilitation and Repair Policy, Resolutions No. 55,384-N.S. and 64,733-N.S. approved by City Council after recommendation by the Public Works Commission, contains the basic criteria for developing the plan and includes the following:

1. PMS output based on:
 - Street pavement condition
 - Type of repair required
 - Cost effectiveness
 - Amount and type of traffic
2. Coordination with other City programs:
 - sanitary sewer
 - storm drain sewer
 - sidewalk
 - utility undergrounding districts
 - city building upgrades
 - traffic signals and other traffic calming measures
 - bicycle improvements
 - park projects
 - Street Maintenance Division activities
3. Coordination with known utility company work:
 - Pacific Gas & Electric (PG&E)
 - East Bay Municipal Utility District (EBMUD)
 - AT&T
 - Comcast
 - New services for developments (private building projects)
4. Budget distributed accordingly:
 - Arterials – 10%
 - Collectors – 50%
 - Residentials – 25%
 - Discretionary and Demonstration – 15%
5. Collector and residential streets with AC Transit bus routes or bicycle routes (from Berkeley Bicycle Plan) given first consideration over those without such routes
6. Contiguous blocks rather than one block at a time as much as possible



City of Berkeley
Abstract of Bid Worksheet

Finance Department
General Services Division

FOR: STREET REHABILITATION FY 2013

Spec. # 13-10687-C

Bid Date: 10/23/12

	Bidders	Base Bid	Nuc Free	Work Force Comp	Opp. States	Living Wage	EEO	Bid Bond	Addenda
1	<i>D.C. Jones</i>	<i>2,632,000.</i>	/		/			/	
2	<i>Callaghan + Burke</i>	<i>2,297,000.</i>	/		/			/	
3	<i>Interstate Grading</i>	<i>2,566,454.</i>	/		/			/	
4	<i>Synergy Project Group</i>	<i>3,696,405.</i>	/		/			/	
5	<i>AT&T M&T Services</i>	<i>2,589,880.</i>	/		/			/	
6									
7									
8									
9									
10									

Bid Recorder: *Shelley O'Shea* 10/23/12
 Bid Opener: *Kathleen Gray* 10/23/12
 Project Manager: *Shelley O'Shea* 10/23/12

