

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: September 21, 2020
Reviewed by: NA

SUBJECT: CIP Project No. 25011 – Lower Solano Avenue Curb Ramps Project,
Award Contract No. C20-65

REPORT BY: Emile Morales, Associate Engineer, Sidewalks Program Manager
Robert Gonzales, Capital Improvements Program Manager
Mark Hurley, Public Works Director

SUMMARY

On August 27, 2020, the City received and opened eleven (11) bids for the Lower Solano Ave Curb Ramp Project, an ADA accessibility project funded by U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG). Staff found the apparent low bid, submitted by Burch Construction, to be non-responsive. In response to this determination, Burch Construction submitted a bid protest. Following the City's Municipal Code, the Public Works Director in consultation with the City Attorney found Burch's bid protest to be baseless. Staff recommends awarding this contract to the lowest responsible bidder submitting a responsive bid, Villalobos & Associates, in the amount of \$401,928.

STAFF RECOMMENDATION

That the Council adopt Resolution No. 2020-94 to:

1. Reject Burch Construction's bid for the Lower Solano Ave Curb Ramps Project as non-responsive; and
2. Ratify the Public Works Director's determination that Burch Construction's bid protest is baseless; and
3. Authorize Staff to spend Community Development Block Grant (CDBG) funding assigned to the project in the amount of \$571,705.50; and
4. Authorize the City Manager to award Contract No. C20-65 – Lower Solano Ave Curb Ramps Project to Villalobos & Associates in the amount of \$401,928.

BACKGROUND

In December of 2019, the Albany City Council approved a settlement agreement to resolve injunctive relief claims made under the Americans with Disabilities Act (ADA) in two pending lawsuits.

The cases against the City (Galpern v. City of Albany and Saraswati v. City of Albany) both requested that the court issue an injunction ordering the City to upgrade its sidewalks, curb ramps and crosswalks to meet current ADA accessibility standards. The case settlement included a commitment to provide accessible curb ramps in the project area within two years of December 2019.

Parallel to the settlement negotiations taking place, the City received an allocation of Community Development Block Grant (CDBG) funds specifically to bring existing curb ramps within the Albany downtown district up to current ADA standards. CDBG is one of the longest-running programs of the U.S. Department of Housing and Urban Development (HUD), funding activities such as affordable housing, anti-poverty programs, and infrastructure development. CDBG funds were allocated to the City for curb ramp capital improvements in fiscal years 2018/19, 2019/20, and 2020/21, as part of the general entitlement the City receives as a member of the “Alameda County Urban County.” Additional funding was allocated in fiscal year 2019/20 from the Urban County’s Capital Pool to further fund the construction of this project (Resolution No. 2020-46).

Oberkamper & Associates (Oberkamper) was awarded a contract for curb ramp design in April 2019 and have submitted drawings for bidding purposes. In May 2020, Staff presented the 90% design to the Transportation Commission (previously Traffic and Safety Commission).

City staff has prepared and compiled designs for the curb ramps project into a Bid Package. A Call for Bids was approved by Council on June 15, 2020 (Resolution No. 2020-56), with a Bid Opening date set for August 27, 2020.

DISCUSSION

On August 27, 2020, the City received and opened eleven (11) bids for construction of the Lower Solano Avenue Curb Ramps Project. The engineer’s estimate for this work is \$525,574. As seen in the following table, the bids ranged from \$400,310.00 to \$563,323.50. Attachment 2 presents a complete summary of the bid results.

BIDDER	BID AMOUNT
Burch Construction	\$400,310.00
Villalobos & Associates	\$401,928.00
Rosas Brothers Construction	\$437,912.00
R&S Construction Management, Inc.	\$438,575.00
Kerex Engineering	\$444,690.00
FBD Vanguard Construction, Inc.	\$448,212.00
Sposeto Construction	\$451,464.70
HM Construction	\$500,265.21
MCE Corporation	\$512,709.00
ERA Construction	\$515,228.00
JJR Construction, Inc.	\$563,323.50

As part of reviewing the bids, Staff requested information about past projects from the apparent low bidder, Burch Construction (Burch). The Bidder's Questionnaire, among other things, requires the contractor to provide information about past projects. In response to this request, Burch provided a list of 17 projects on company letterhead on August 27, 2020.

Staff called six of the 17 references. None of the six were able to identify Burch as either the prime or subcontractor for the respective projects.

Concurrent to this review, Villalobos & Associates requested a copy of Burch's bid. Since the opened bids are public record, staff forwarded a copy of Burch's bid package on August 28, 2020. After reviewing the bid package, Villalobos indicated to staff that someone other than the owner of the company signed Burch's bid.

Staff reviewed the reference and signature issues with the City Attorney and determined that the irregularities in the project references provided in Burch's bid and the failure to appropriately execute the bid and associate bid bond through a representative with authority to do so constitute material errors in the bid requiring the City to reject the bid as non-responsive.

On September 1, 2020, staff sent a letter notifying Burch that the City has determined their bid to be non-responsive based on two factors (Attachment 3). First and as noted above, several of the references submitted as part of the Bidder's Questionnaire did not relate to work performed by Burch Construction. Secondly, "Burch Construction" is a sole proprietorship and serves as a fictitious business name for Elethia Burch. However, the individual signing the various bid forms including the Bid Proposal, Bid Bond and Bidder's Questionnaire is not Ms. Burch and no power of attorney was provided evidencing delegation of the authority for another (i.e., the signatory to the various Bid forms in this case) to sign on behalf of Ms. Burch.

The letter also indicated the City's intention to award the project to Villalobos & Associates, the lowest responsible bidder submitting a responsive bid. The City Manager also authorized extension of the bid protest deadline until 1:00 PM on September 4, 2020., to provide a good faith protest period in the event Burch chose to submit a protest.

In response to the City's letter, Burch submitted a bid protest letter dated September 1, 2020 (Attachment 4) signed by Ms. Burch. The letter provided information on the two issues raised by the City. In summary, the past project references submitted by Burch were in regard to projects constructed by Empire Engineering & Construction, which Ms. Burch represented is an affiliated entity that is a predecessor to Burch. Ms. Burch further noted that that Burch has several different employees who are authorized to sign on behalf of Burch.

Per Section 13-18d of the Albany Municipal Code, the Public Works Director in consultation with the City Attorney reviewed the merits of the protest claim. This review concluded that Burch's protest is baseless. The bid documents require the bidder to list references for the project the bidder performed, not projects performed by a separate and distinct legal entity, which the bidder may or may not have an affiliation with. Also, sole proprietorships can only be bound by the individual who serves as the sole proprietor or someone who has power of

attorney to act on behalf of the sole proprietor. Burch’s protest did not address this issue. The finding that the bid protest is baseless is subject to City Council ratification.

Staff’s recommendation is to award Contract No. C20-65 to the lowest responsible bidder submitting a responsive bid, Villalobos & Associates, in the amount of \$401,928.

ENVIRONMENTAL CLEARANCE:

This project consists of the rehabilitation of an existing street asset and is determined to be categorically exempt under CEQA.

SUSTAINABILITY CONSIDERATIONS

This project involves the removal and replacement of existing asphalt concrete pavement, curbs, gutters, installation of accessibility curb ramps and installation of a bioretention basin. Accessibility ramps provide greater mobility by disabled persons, strollers, and able-bodied persons in general. This promotes non-motorized travel, thereby reducing air emissions. The installation of a bioretention basin helps percolate and naturally treat stormwater runoff, aiding in the City’s development of green infrastructure.

FINANCIAL SUMMARY

As noted previously, federal funds have been allocated to the City via annual Community Development Block Grant assignments. In fiscal years 2018/19, 2019/20, and 2020/21, part of the City’s allocation as part of the “Alameda County Urban County” was assigned to the Lower Solano Curb Ramps Project (CIP No. 25011), as per the Council action listed below. In FY2019/20, the City also applied for and received additional funding from the program’s Capital Pool for the project, hence the larger allocation in that year.

Resolution No.	Fiscal Year	Allocation
2018-130	FY2018-19	\$22,524
2019-60	FY2019-20	\$523,538
2020-42	FY2020-21	\$25,643.50
	Total:	\$571,705.50

The following are the estimated project costs:

Expenditures – Spent to Date	
Professional Services (Design, ADA Plan Check)	\$50,805
Total Expenditures – Spent to Date	\$50,805
Expenditures – Estimated	
Professional Services (Design, ADA Plan Check)	\$60,000
Construction	\$402,000
Construction Management / Inspection	\$20,000
Contingency	\$60,000
Total Project Expenditures – Estimated	\$542,000

As of September 1, 2020, the City has spent \$50,805 on Professional Services (Design).

The contract recommended in this Staff Report is within the funding assigned from CDBG allocations; no budget adjustments are needed at this time.

Attachments

1. Resolution No. 2020-94
2. Clerk’s Certification/Bid Summary & Tabulation
3. City Letter Reject Burch’s Bid
4. Burch’s Bid Protest Letter
5. Contract No. C20-65

1 **WHEREAS**, on June 15, 2020, the City Council authorized staff to issue a Notice
2 Inviting Bids for the Lower Solano Curb Ramps Project; and

3
4 **WHEREAS**, on August 27, 2020, the City received and opened eleven (11) bids
5 for the above-mentioned project; and

6
7 **WHEREAS**, Burch Construction submitted a bid of \$400,010, the apparent low
8 bid; and

9
10 **WHEREAS**, City Staff and legal counsel determined Burch Construction’s bid to
11 be non-responsive on two issues: references submitted as part of the Bidder’s
12 Questionnaire did not relate to work performed by Burch Construction; and the individual
13 signing the various bid forms, including the Bid Proposal, Bid Bond and Bidder’s
14 Questionnaire is not the sole proprietor/owner of the company as indicated on the
15 Bidder’s Questionnaire; and

16
17 **WHEREAS**, Villalobos & Associates is the next lowest responsible and responsive
18 bidder, with a bid of \$401,928, for the construction of the Solano ADA Curb Ramps
19 Project.

20
21 **NOW, THEREFORE, BE IT RESOLVED**, that the Albany City Council hereby
22 rejects Burch Construction’s bid for the Lower Solano Ave Curb Ramps Project as non-
23 responsive; and

24
25 **BE IT FURTHER RESOLVED**, that the Albany City Council ratifies the Public
26 Works Director’s determination that Burch Construction’s bid protest is baseless; and

27
28
29

BID RESULTS

Project: **Solano ADA Curb Ramps Project #C20-65**

Bid Opening: **Thursday, August 27, 2020 at 2:00 p.m.**

Location: **City Hall, 1000 San Pablo Avenue, Albany, CA 94706**

Staff called for bids and the following were received:

Rosas Brothers Construction

\$ 437,912.00

Villalobos & Associates

\$ 401,928.00

ERA Construction Inc.

\$ 515,228.00

HM Construction

\$ 491,080.21* mathematical error found, see Tabulation for corrected amount

R&S Construction Management Inc.

\$ 438,575.00

Burch Construction

\$ 400,010.00* mathematical error found, see Tabulation for corrected amount

Sposeto Engineering Inc.

\$ 451,464.70

MCE Corporation

\$ 512,709.00

JJR Construction Inc.

\$ 563,323.50

Kerex Engineering

\$ 444,690.00

FBD Vanguard Construction Inc.

\$ 448,212.00

The above results may include errors and/or omissions by the bidder. Bids are referred to staff for review.

City of Albany - Solano ADA Curb Ramps - Contract # 20-65

Bid opening: 14:00, Thursday, August 27, 2020

Location: City of Albany City Hall at 1000 San Pablo Ave., Albany, CA

BID SUMMARY

Bidder	Total Bid Price
Apparent Low Bidder	
1. Burch Construction	\$ 400,010.00
2. Villalobos & Associates	\$ 401,928.00
3. Rosas Brothers Construction	\$ 437,912.00
4. R&S Construction Management,	\$ 438,575.00
5. Kerex Engineering	\$ 444,690.00
6. FBD Vanguard Construction, Inc.	\$ 448,212.00
7. Sposeto Construction	\$ 451,464.70
8. HM Construction	\$ 491,080.21
9. MCE Corporation	\$ 512,709.00
10. ERA Construction Inc.	\$ 515,228.00
11. JJR Construction Inc.	\$ 563,323.50

City of Albany - Solano ADA Curb Ramps - Contract # 20-65
 Bid opening: 14:00, Thursday, August 27, 2020
 Location: City of Albany City Hall at 1000 San Pablo Ave., Albany, CA

BID ITEM NO.	ITEM DESCRIPTION	EST. QTY.	UNIT	Burch Construction		Villalobos & Associates		Rosas Brothers Construction		R&S Construction Management, Inc		Kerex Engineering		FBD Vanguard Construction, Inc.		Sposeto Construction		HM Construction		MCE Corporation		ERA Construction Inc.		JJR Construction Inc.	
				UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1	Mobilization	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 10,000.00	\$ 10,000.00	\$ 3,000.00	\$ 3,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 40,000.00	\$ 40,000.00	\$ 18,700.00	\$ 18,700.00	\$ 74,910.54	\$ 74,910.54	\$ 4,000.00	\$ 4,000.00	\$ 16,560.00	\$ 16,560.00	\$ 15,000.00	\$ 15,000.00
2	Traffic Control and Construction Area Signs	1	LS	\$ 58,000.00	\$ 58,000.00	\$ 15,000.00	\$ 15,000.00	\$ 6,000.00	\$ 6,000.00	\$ 50,000.00	\$ 50,000.00	\$ 12,000.00	\$ 12,000.00	\$ 71,000.00	\$ 71,000.00	\$ 17,400.00	\$ 17,400.00	\$ 25,000.00	\$ 25,000.00	\$ 50,000.00	\$ 50,000.00	\$ 7,500.00	\$ 7,500.00	\$ 50,000.00	\$ 50,000.00
3	Water Pollution Control	1	LS	\$ 3,500.00	\$ 3,500.00	\$ 1,000.00	\$ 1,000.00	\$ 8,000.00	\$ 8,000.00	\$ 2,000.00	\$ 2,000.00	\$ 4,000.00	\$ 4,000.00	\$ 3,684.00	\$ 3,684.00	\$ 6,500.00	\$ 6,500.00	\$ 2,500.00	\$ 2,500.00	\$ 4,000.00	\$ 4,000.00	\$ 3,500.00	\$ 3,500.00	\$ 2,000.00	\$ 2,000.00
Concrete Improvement																									
4	Remove existing concrete	8,650	SF	\$ 10.00	\$ 86,500.00	\$ 4.00	\$ 34,600.00	\$ 7.00	\$ 60,550.00	\$ 3.00	\$ 25,950.00	\$ 5.00	\$ 43,250.00	\$ 11.60	\$ 100,340.00	\$ 12.00	\$ 103,800.00	\$ 6.88	\$ 59,512.00	\$ 5.00	\$ 43,250.00	\$ 9.00	\$ 77,850.00	\$ 16.00	\$ 138,400.00
5	Remove existing drain box	3	EA	\$ 500.00	\$ 1,500.00	\$ 200.00	\$ 600.00	\$ 1,000.00	\$ 3,000.00	\$ 200.00	\$ 600.00	\$ 500.00	\$ 1,500.00	\$ 50.00	\$ 150.00	\$ 300.00	\$ 900.00	\$ 500.00	\$ 1,500.00	\$ 180.00	\$ 540.00	\$ 700.00	\$ 2,100.00	\$ 1,000.00	\$ 3,000.00
6	Remove existing drain pipe	66	LF	\$ 250.00	\$ 16,500.00	\$ 10.00	\$ 660.00	\$ 40.00	\$ 2,640.00	\$ 50.00	\$ 3,300.00	\$ 25.00	\$ 1,650.00	\$ 5.00	\$ 330.00	\$ 70.00	\$ 4,620.00	\$ 54.00	\$ 3,564.00	\$ 30.00	\$ 1,980.00	\$ 250.00	\$ 16,500.00	\$ 100.00	\$ 6,600.00
7	Construct 1 ft-High Retaining Wall	35	LF	\$ 150.00	\$ 5,250.00	\$ 120.00	\$ 4,200.00	\$ 55.00	\$ 1,925.00	\$ 80.00	\$ 2,800.00	\$ 125.00	\$ 4,375.00	\$ 30.00	\$ 1,050.00	\$ 168.00	\$ 5,880.00	\$ 155.00	\$ 5,425.00	\$ 70.00	\$ 2,450.00	\$ 95.00	\$ 3,325.00	\$ 75.00	\$ 2,625.00
STREET IMPROVEMENTS																									
8	Construct standard 6" curb and gutter	140	LF	\$ 95.00	\$ 13,300.00	\$ 48.00	\$ 6,720.00	\$ 85.00	\$ 11,900.00	\$ 68.00	\$ 9,520.00	\$ 70.00	\$ 9,800.00	\$ 35.00	\$ 4,900.00	\$ 72.00	\$ 10,080.00	\$ 56.00	\$ 7,840.00	\$ 48.00	\$ 6,720.00	\$ 80.00	\$ 11,200.00	\$ 123.20	\$ 17,248.00
9	Construct concrete sidewalk	1,541	SF	\$ 10.00	\$ 15,410.00	\$ 18.00	\$ 27,738.00	\$ 17.00	\$ 26,197.00	\$ 15.00	\$ 23,115.00	\$ 15.00	\$ 23,115.00	\$ 6.00	\$ 9,246.00	\$ 16.70	\$ 25,734.70	\$ 27.87	\$ 42,947.67	\$ 19.00	\$ 29,279.00	\$ 18.00	\$ 27,738.00	\$ 20.50	\$ 31,590.50
10	Construct Curb Ramp (Case A)	45	EA	\$ 3,000.00	\$ 135,000.00	\$ 5,700.00	\$ 256,500.00	\$ 5,200.00	\$ 234,000.00	\$ 6,000.00	\$ 270,000.00	\$ 6,150.00	\$ 276,750.00	\$ 3,800.00	\$ 171,000.00	\$ 4,630.00	\$ 208,350.00	\$ 5,180.00	\$ 233,100.00	\$ 6,800.00	\$ 306,000.00	\$ 6,000.00	\$ 270,000.00	\$ 5,300.00	\$ 238,500.00
11	Construct Curb Ramp (Case G)	3	EA	\$ 3,200.00	\$ 9,600.00	\$ 5,700.00	\$ 17,100.00	\$ 5,200.00	\$ 15,600.00	\$ 6,600.00	\$ 19,800.00	\$ 6,250.00	\$ 18,750.00	\$ 3,800.00	\$ 11,400.00	\$ 3,800.00	\$ 11,400.00	\$ 8,900.00	\$ 26,700.00	\$ 5,250.00	\$ 15,750.00	\$ 6,800.00	\$ 20,400.00	\$ 5,300.00	\$ 15,900.00
12	Remove and replace 12" white thermoplastic traffic striping	60	LF	\$ 25.00	\$ 1,500.00	\$ 41.00	\$ 2,460.00	\$ 90.00	\$ 5,400.00	\$ 10.00	\$ 600.00	\$ 90.00	\$ 5,400.00	\$ 76.00	\$ 4,560.00	\$ 64.50	\$ 3,870.00	\$ 50.00	\$ 3,000.00	\$ 75.00	\$ 4,500.00	\$ 125.00	\$ 7,500.00	\$ 86.00	\$ 5,160.00
STORM DRAIN IMPROVEMENTS																									
13	Install Christy drain box BX09	1	EA	\$ 2,000.00	\$ 2,000.00	\$ 400.00	\$ 400.00	\$ 3,000.00	\$ 3,000.00	\$ 100.00	\$ 100.00	\$ 500.00	\$ 500.00	\$ 420.00	\$ 420.00	\$ 2,400.00	\$ 2,400.00	\$ 1,560.00	\$ 1,560.00	\$ 480.00	\$ 480.00	\$ 200.00	\$ 200.00	\$ 800.00	\$ 800.00
14	Install Christy drain box B24	1	EA	\$ 2,000.00	\$ 2,000.00	\$ 400.00	\$ 400.00	\$ 3,500.00	\$ 3,500.00	\$ 100.00	\$ 100.00	\$ 500.00	\$ 500.00	\$ 490.00	\$ 490.00	\$ 2,400.00	\$ 2,400.00	\$ 1,433.00	\$ 1,433.00	\$ 525.00	\$ 525.00	\$ 650.00	\$ 650.00	\$ 1,000.00	\$ 1,000.00
15	Install Christy drain inlet V09	1	EA	\$ 7,500.00	\$ 7,500.00	\$ 400.00	\$ 400.00	\$ 4,500.00	\$ 4,500.00	\$ 100.00	\$ 100.00	\$ 500.00	\$ 500.00	\$ 1,180.00	\$ 1,180.00	\$ 1,400.00	\$ 1,400.00	\$ 1,200.00	\$ 1,200.00	\$ 575.00	\$ 575.00	\$ 780.00	\$ 780.00	\$ 1,000.00	\$ 1,000.00
16	Install 4"x12" steel SD under sidewalk drain	70	LF	\$ 25.00	\$ 1,750.00	\$ 200.00	\$ 14,000.00	\$ 400.00	\$ 28,000.00	\$ 80.00	\$ 5,600.00	\$ 70.00	\$ 4,900.00	\$ 233.00	\$ 16,310.00	\$ 156.00	\$ 10,920.00	\$ 44.00	\$ 3,080.00	\$ 300.00	\$ 21,000.00	\$ 500.00	\$ 35,000.00	\$ 200.00	\$ 14,000.00
17	Install 12" SD pipe	8	LF	\$ 250.00	\$ 2,000.00	\$ 250.00	\$ 2,000.00	\$ 500.00	\$ 4,000.00	\$ 300.00	\$ 2,400.00	\$ 400.00	\$ 3,200.00	\$ 544.00	\$ 4,352.00	\$ 400.00	\$ 3,200.00	\$ 66.00	\$ 528.00	\$ 250.00	\$ 2,000.00	\$ 350.00	\$ 2,800.00	\$ 500.00	\$ 4,000.00
UTILITY IMPROVEMENTS / MISCELLANEOUS																									
18	Replace 6" round utility box and cover	9	EA	\$ 500.00	\$ 4,500.00	\$ 350.00	\$ 3,150.00	\$ 500.00	\$ 4,500.00	\$ 100.00	\$ 900.00	\$ 500.00	\$ 4,500.00	\$ 350.00	\$ 3,150.00	\$ 290.00	\$ 2,610.00	\$ 56.00	\$ 504.00	\$ 240.00	\$ 2,160.00	\$ 225.00	\$ 2,025.00	\$ 500.00	\$ 4,500.00
19	Replace 12"x18" utility box and cover	2	EA	\$ 1,000.00	\$ 2,000.00	\$ 500.00	\$ 1,000.00	\$ 600.00	\$ 1,200.00	\$ 120.00	\$ 240.00	\$ 500.00	\$ 1,000.00	\$ 420.00	\$ 840.00	\$ 400.00	\$ 800.00	\$ 165.00	\$ 330.00	\$ 3,400.00	\$ 6,800.00	\$ 650.00	\$ 1,300.00	\$ 750.00	\$ 1,500.00
20	Replace 24"x36" utility box and cover	1	EA	\$ 2,000.00	\$ 2,000.00	\$ 800.00	\$ 800.00	\$ 1,500.00	\$ 1,500.00	\$ 150.00	\$ 150.00	\$ 2,500.00	\$ 2,500.00	\$ 840.00	\$ 840.00	\$ 1,900.00	\$ 1,900.00	\$ 1,766.00	\$ 1,766.00	\$ 3,500.00	\$ 3,500.00	\$ 1,500.00	\$ 1,500.00	\$ 2,500.00	\$ 2,500.00
21	Replace 36"x60" utility vault and metal lid	1	EA	\$ 5,000.00	\$ 5,000.00	\$ 1,200.00	\$ 1,200.00	\$ 3,500.00	\$ 3,500.00	\$ 500.00	\$ 500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,000.00	\$ 2,000.00	\$ 4,600.00	\$ 4,600.00	\$ 1,778.00	\$ 1,778.00	\$ 4,600.00	\$ 4,600.00	\$ 3,000.00	\$ 3,000.00	\$ 3,500.00	\$ 3,500.00
22	Replace tree well cover	1	EA	\$ 3,500.00	\$ 3,500.00	\$ 1,600.00	\$ 1,600.00	\$ 4,000.00	\$ 4,000.00	\$ 300.00	\$ 300.00	\$ 2,500.00	\$ 2,500.00	\$ 745.00	\$ 745.00	\$ 3,100.00	\$ 3,100.00	\$ 1,087.00	\$ 1,087.00	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00	\$ 3,500.00	\$ 3,500.00
23	Relocate bench	1	EA	\$ 2,000.00	\$ 2,000.00	\$ 400.00	\$ 400.00	\$ 2,000.00	\$ 2,000.00	\$ 500.00	\$ 500.00	\$ 1,500.00	\$ 1,500.00	\$ 225.00	\$ 225.00	\$ 900.00	\$ 900.00	\$ 1,000.00	\$ 1,000.00	\$ 800.00	\$ 800.00	\$ 2,000.00	\$ 2,000.00	\$ 1,000.00	\$ 1,000.00
TOTAL BID				\$ 400,310.00	\$ 400,310.00	\$ 401,928.00	\$ 401,928.00	\$ 437,912.00	\$ 437,912.00	\$ 438,575.00	\$ 438,575.00	\$ 444,690.00	\$ 444,690.00	\$ 448,212.00	\$ 448,212.00	\$ 451,464.70	\$ 451,464.70	\$ 500,265.21	\$ 500,265.21	\$ 512,709.00	\$ 512,709.00	\$ 515,228.00	\$ 515,228.00	\$ 563,323.50	\$ 563,323.50

ALBANY CALIFORNIA

CITY OF ALBANY



PUBLIC WORKS

1000 SAN PABLO AVENUE
ALBANY, CA 94706
510 524-9543

www.AlbanyCA.org/pw

Clifton J Burch, Burch Construction Company
180 Mendell Street
San Francisco, CA 94124

September 1, 2020

Mr. Burch:

The City has completed review of Burch Construction Company's ("Burch Construction") bid for the Solano ADA Curb Ramps Project (Contract #C20-65) and has determined the bid to be non-responsive. This determination was based on the following two factors.

First, several of the references submitted as part of the Bidder's Questionnaire did not relate to work performed by Burch Construction. City staff contacted references for six of the 17 project references provided by Burch Construction in its bid. These references were unable to identify Burch Construction as the prime contractor or a subcontractor for any of their respective projects.

Secondly, Burch Construction is a sole proprietorship and serves as a fictitious business name for Elethia Burch. It is our understanding Burch Construction's contractor license is also held under Elethia Burch's name. However, the individual signing the various bid forms, including the Bid Proposal, Bid Bond and Bidder's Questionnaire, is not the sole proprietor/owner of the company as indicated on the Bidder's Questionnaire.

Based on the foregoing, City staff intends to recommend the City Council reject the bid submitted by Burch Construction as non-responsive and award to the lowest responsible bidder submitting a responsive bid, Villalobos & Associates. The City Council will meet to consider award of the contract on September 21, 2020 at 7:30 PM.

Please also be advised the City Manager has authorized extending the bid protest deadline to 1:00 PM on September 4, 2020.

Yours sincerely,

Emile Morales
Associate Engineer

CC: Robert Gonzales, CIP Program Manager
Mark Hurley, Public Works Director/City Engineer
Malathy Subramanian, City Attorney
Nicole Almaguer, City Manager



9/01/ 2020

Albany California
Department of Public Work
1000 San Pablo Ave
Albany, CA 94706

Attention: Emile Morales

Subject: Response to Bid Protest

Dear Mr. Morales

In response to your correspondence dated September 01, 2020 with regards Burch Construction Company listed as disqualified bidder:

Burch Construction Company (BCC), would like to address all of “The City of Albany’s” alleged errors in our bid proposal that would deem it as non-responsive.

Item (1): BCC did not list references submitted as part of the bidder’s questionnaire and also did not relate to work performed by Burch Construction as frivolous. This is in fact incorrect, though the work wasn’t performed by the BCC it was in fact performed by Empire Engineering & Construction, Inc.” in which I am the sole owner and all employees & staff that performed the task of the referenced project listed, includes me as the owner which is now operating as BCC. We understand though it wasn’t clear as to which company performed the work, the company as BCC actually performed the work and therefore has the experience to perform the work that is in question, at a much lower scale. In fact, BCC is currently performing work in South San Francisco under the same conditions and has been awarded.

We believe, on the above issues noted that the listed project submitted, BCC has in good faith achieved the required goals based on the assumption that this contract is predicated on.

Item (2): Based on the bid documents and the required listing of all of all signatures, BCC is not required to have the owner of the firm to sign-off on all documents. We have several different employees who are authorized signers for the firm. At the time of bond signing that was notarized by the bonding company and/or broker prior to bidder’s submission, the signature was deemed legal and approved for submission.

It is our opinion that BCC has met and achieved the minimum requirements and our bid proposal should be deemed as responsive. We believe that the City of Albany would benefit from a competitive bid that is of Lower Competitive Value.

It is our opinion that the City of Albany is entitled to waive any minor irregularities in the bid documents, and hopeful that this would be the situation.

Burch Construction Company, appreciates the opportunity to reply and address the alleged allegations. If there are any questions you have or need additional information, please contact me at (510) 415.786.9019.

Sincerely,



Elethia M. Gentry-Burch
President

Contract

This public works contract ("Contract") is entered into by and between the City of Albany ("City") and Villalobos & Associates ("Contractor"), for work on the Solano ADA Curb Ramps Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On _____, 20____, City authorized award of this Contract to Contractor for the amount set forth in Section 4, below.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:
 - 2.1 Notice Inviting Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment, Performance and Warranty Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Drawings and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed; and
 - 2.13 The following: No other documents
3. **Contractor's Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.
4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor \$_____ ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within seventy (70) days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$500 per day for each day of unexcused delay in completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.

7. Labor Code Compliance.

7.1 General. This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.

7.2 Prevailing Wages. This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

7.3 DIR Registration. City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code section 1725.5, subject to limited legal exceptions.

8. Workers' Compensation Certification. Under Labor Code section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. Conflicts of Interest. Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or policy or in violation of any California law, including under Government Code section 1090 et seq. and under the Political Reform Act as set forth in Government Code section 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

10. Independent Contractor. Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.

11. Notice. Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

Dept: Department of Public Works
Address: 540 Cleveland Avenue
City/State/Zip: Albany, CA 94710
Phone: (510) 559-4594
Attn: Emile Morales
Email: emorales@albanyca.org
Copy to: Mark Hurley, Public Works Director, mhurley@albanyca.org

Contractor:

Name: Villalobos & Associates
Address: PO Box 110004
City/State/Zip: Campbell, CA 95011
Phone: (408) 585-5738
Attn: Jason Duran
Email: villalobosassociates@gmail.com
Copy to: _____

12. General Provisions.

- 12.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.
- 12.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Alameda County, and no other place.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 12.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code section 313.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

CITY:

Approved as to form:

s/ _____

s/ _____

Nicole Almaguer, City Manager

Malathy Subramanian, City Attorney

Date: _____

Date: _____

Attest:

s/ _____

Anne Hsu, City Clerk

Date: _____

CONTRACTOR: _____
Business Name

s/ _____

Seal:

Name/Title

Date: _____

Second Signature (See Section 12.7):

s/ _____

Name/Title

Date: _____

Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT