

Department of Public Works

Bureau of Engineering
Bureau of Contract Administration
Joint Report No. 1

November 13, 2024
CD No. 5

CONTRACT AWARD TO ACCESS PACIFIC, INC. FOR THE MID-CITY LOW STRESS BICYCLE ENHANCEMENT CORRIDORS, FEDERAL ID No. CML-5006(903) (WORK ORDER No. E1908716)**RECOMMENDING THE BOARD OF PUBLIC WORKS (BOARD):**

1. FIND Transmittal No. 1 to be unmerited, as discussed in this report.
2. FIND that the late submission of the Exhibit 15-G Construction Contract DBE Commitment form by Access Pacific, Inc. (Access) as an inconsequential deviation that did not give them an unfair competitive advantage, as discussed in this report.
3. DECLARE Access, first low bidder, to be the lowest responsive, responsible bidder, and AWARD Access a contract for the Mid-City Low Stress Bicycle Enhancement Corridors, Federal ID No. CML-5006(903) (Project) for \$5,028,170.
4. AUTHORIZE the President or two members of the Board to execute the contract after approval as-to-form has been obtained from the City Attorney.

TRANSMITTALS

1. Communication No. 122642, copy of the letter dated May 24, 2024, from Curtis Brown III, President, Excel Paving Company, P.O. Box 16405, Long Beach, CA 90806-5195, to the Board.
2. Summary of bids received on May 22, 2024.

DISCUSSION***Background***

The Project will install 4.5 miles of bicycle promoting and traffic calming treatments along two strategic neighborhood corridors that promote low stress bicycle connections from the Mid-City to Hollywood. The proposed eastbound/westbound bike path along Rosewood Avenue will connect to the proposed northbound/southbound path that will extend from Metro's Hollywood/Highland Red Line Station to the future La Brea/Wilshire Purple Line Station. The route for the Mid-City bicycle promoting neighborhood corridors is shown in Figure No. 1.

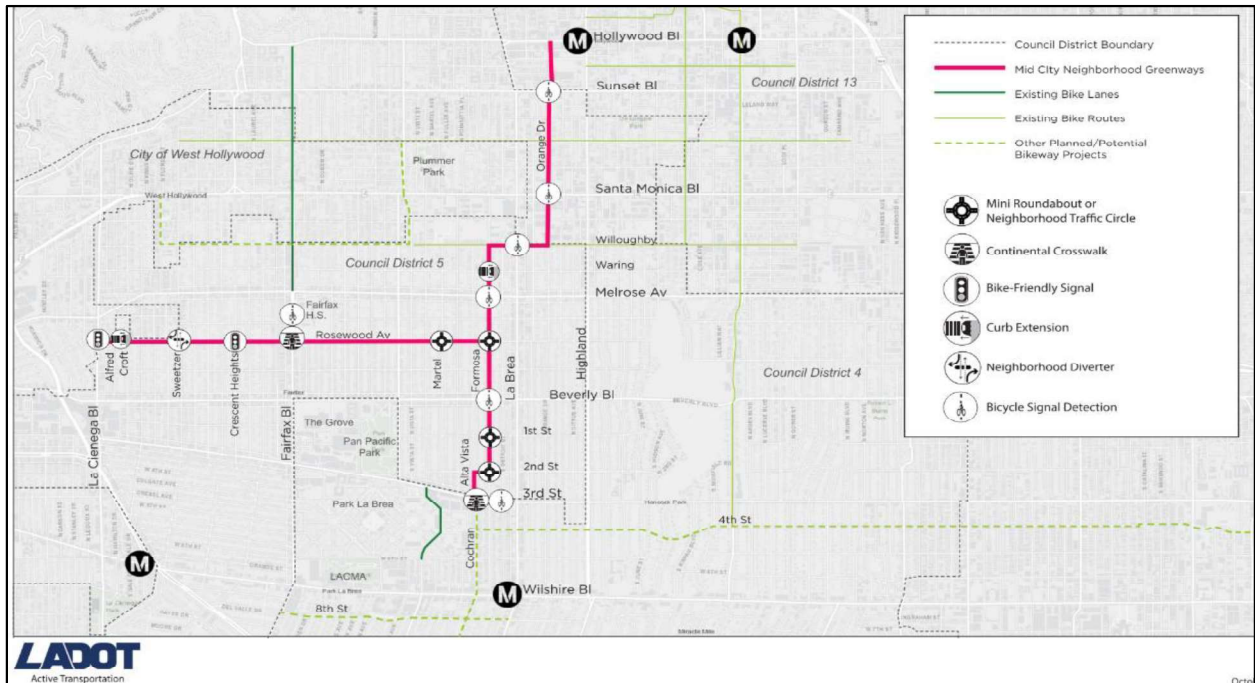


Figure No. 1: Mid-City Neighborhood Bicycle Enhancement Corridors.

The Project will construct a new mini-roundabout, bicycle accessible diverters, sidewalks, curb extension, curb ramps, mountable curbs, and landscaping. The scope of the work also includes installing a new signal and streetlight pole; thermoplastic delineation and pavement marking; regulatory and warning signs; irrigation systems; planting trees; and adjusting and relocating pull boxes. The typical Project scope of work, as proposed for the Rosewood Avenue and Fairfax Avenue intersection, is shown in Figure No. 2. The contract duration is 518 calendar days.

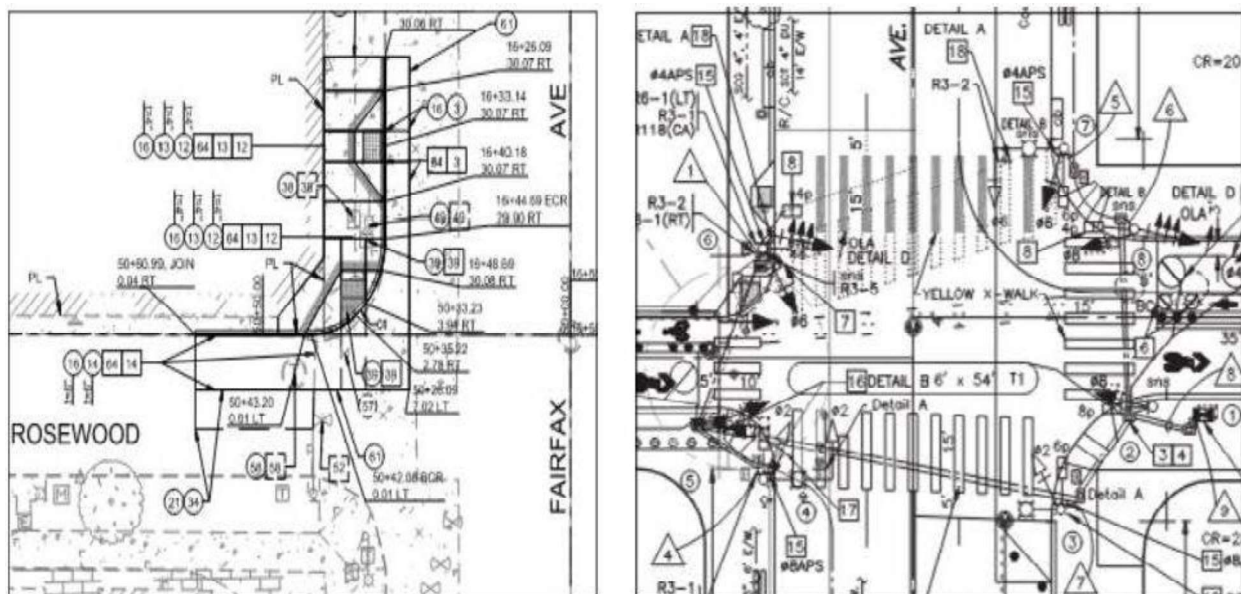


Figure No. 2: Typical Project scope of work. Curb ramp and sidewalk (left). Permanent traffic signal and striping (right). Location at Rosewood Avenue and Fairfax Avenue.

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The Project has been reviewed for environmental considerations. It was determined to be categorically exempt pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, under Article III of the City of Los Angeles' (City)'s CEQA Guidelines. The Project was also determined to comply with the provisions of the National Environmental Policy Act under a categorical exclusion.

Bid Review

The lowest of the two bids received (Transmittal No. 2) compared with the City Engineer's estimate of \$2,929,186 is:

Disadvantaged Business Enterprise Program Outreach Codes:

DBE = Disadvantaged Business Enterprise OBE = Other Business Enterprise

Bid No.	Contractor's Name	Bid Amount	% High/Low	% Pledged	
				DBE	OBE
Low Bid	Access (DBE)	\$5,028,170.00	71.66% High	68.98%	31.02%

Access, first low bidder, listed their Total Bid Amount incorrectly. Staff corrected Access' Total Bid Amount in accordance with the procedures set forth in the General Instructions and Information for Bidders. Access was contacted and notified of the corrections. The corrections did not change the order of the bids.

Based on the range of bids submitted for this Project, staff believes this bid is reasonable. The contract may be awarded to Access, first low bidder, subject to verification of all other bidding requirements.

DBE Program

This Project is federally funded and is subject to the City's DBE Program in accordance with regulations of the U.S. Department of Transportation, 49 Code of Federal Regulations, Part 26, and the California Department of Transportation's (Caltrans) DBE Program. The Race-Conscious DBE participation level was calculated using the dollar amounts of the DBE-certified subcontractors. Subcontractors not certified as DBE were considered OBE. Caltrans requires that staff calculate the DBE pledged participation levels based on the information provided on the bidder's Exhibit 15-G.

The Project was advertised with a DBE goal of 21 percent. The Office of Contract Compliance, based on the review of the documents submitted by Access, reported that the contractor pledged a DBE commitment of 68.98 percent and an OBE participation level of 31.02 percent. Under the Caltrans Race-Conscious DBE Program, the bidder must either meet

the DBE goal or submit adequate DBE Good Faith Efforts (GFE) documentation. Access met the DBE goal and therefore, was not required to submit DBE GFE documentation.

Access pledged the following DBE/OBE subcontractor utilization:

Gender/Ethnicity Codes:

AA = African American	HA = Hispanic American
APA = Asian Pacific American	SAA = Subcontinent Asian American
NA = Native American	C = Caucasian
M = Male	F = Female

Subcontractors	DBE/ OBE	Gender/ Ethnicity	% of Bid	Dollar Amount
Access*	DBE	M/HA	61.69%	\$3,101,940.00
Cat Tracking, Inc.	DBE	F/C	7.29%	\$ 366,500.00
Oscalibur Plumbing, Inc.	OBE		0.40%	\$ 20,000.00
International Line Builders, Inc.	OBE		30.62%	\$1,539,730.00

*Prime Contractor

Communication Received - Bid Protest

In a letter dated May 24, 2024 (Transmittal No. 1), Excel Paving Company (Excel) is protesting Access' bid for the following reasons:

1. Excel states that Access "did not list a subcontractor for the electrical scope of work, which, based on [Access'] unit prices, equals about 44% of their whole bid." Access initially listed a subcontractor in their original bid but deleted it and did not replace it. Additionally, Excel states that Access does not have a C-10 license and therefore is not legally qualified to self-perform the electrical portion of the Project.
2. Excel states that Access "did not list the dollar amounts for the two subcontractors listed on bid proposal page [F-7]."

Excel concludes its reasons by stating that neglecting to list a subcontractor and the subcontractor's dollar amount, "might allow [Access] to "bid shop" for a "better"/cheaper electrical subcontractor. To do this would be in conflict with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code." Furthermore, Excel states that "if a Bidder can self-perform highly technical trades, such as electrical, by simply hiring a few laborers, then Bidders will just pay an electrical contractor's labor on Time and Material and eliminate the rule and spirit of the entire Contractor's Licensing system."

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Staff's Response

In regard to the protest letter submitted by Excel, dated May 24, 2024 (Transmittal No. 1), the staff's response is as follows:

1. In their review of the bid documents submitted by Access, the Bureau of Contract Administration (BCA) found that Access listed subcontractor International Line Builders, Inc. (ILB) to perform the Project's electrical work totaling \$1,539,730.00 on the Exhibit 12-B Bidder's List of Subcontractors (DBE and Non-DBE) form. Further, BCA verified that ILB possesses an active C-10 license.
2. In their review of the bid documents submitted by Access, BCA found that Access listed all three of their subcontractors Cat Tracking, Inc. (Cat); Oscalibur Plumbing, Inc.; and ILB, along with their corresponding dollar amounts, on Exhibit 12-B (Bidder's List of Subcontractors (DBE and Non-DBE) form. Additionally, Cat was listed on Access' Exhibit 15-G form.

Since Access did in fact list in their bid a licensed electrical subcontractor and that subcontractor's corresponding dollar amount, along with the dollar amounts of their other two bid-listed subcontractors, staff recommends Excel's protest (Transmittal No. 1) to be unmerited.

Informality Noted

The BCA staff noted that the first low bidder, Access, submitted their Exhibit 15-G Construction Contract DBE Commitment form one day late. The Project's bid proposal requirements state bidders must complete and submit the Exhibit 15-G form, among others, to the City within five calendar days of bid opening - by May 27, 2024 at 4:00 p.m. Staff verified that Access submitted their Exhibit form on May 28, 2024 at 3:19 p.m., or one day late. Accordingly, staff notified Access via formal letter that their initial recommendation is to find their bid non-responsive. Access responded stating that their failure to submit the Exhibit form by the deadline was due to May 27, 2024 being a public holiday (Memorial Day). Staff reconsidered their initial recommendation after consultation with Caltrans who advised Access' May 28, 2024, Exhibit 15-G submission may be accepted because the five-calendar day deadline fell on Monday, May 27, 2024, a public holiday (Memorial Day), and Access submitted the Exhibit on the next business day. Staff subsequently consulted the City Attorney's office who advised similarly to Caltrans. As a result, Staff recommends that Access' late submission of their Exhibit 15-G form be found to be an inconsequential deviation that did not give them an unfair competitive advantage.

Deputy City Attorney, Adena Hopenstand, has concurred with the recommendations contained in this report.

Compliance with the City's Non-Discrimination Policies

Access shall comply with the Federal and City Affirmative Action, Non-Discrimination, and Equal Employment Practices Provisions, Equal Benefits Ordinance, Contractor's Use of Criminal History for Consideration of Employment Applications Ordinance, Living Wage Ordinance, Worker Retention Ordinance, First Source Hiring Ordinance, Slavery Disclosure Ordinance, and Disclosure of Border Wall Contracting Ordinance requirements of the bid.

Previous Work Record

Access has worked on several contracts issued by the Board. No significant or unresolved problems in inspection, contract compliance, or bidder responsibility have been experienced by the BCA.

The following table summarizes the previous DBE/OBE participation levels pledged by Access in the past five years:

DBE/OBE Pledged Utilization Table (Race-Conscious DBE Program)			
No. of Contracts	Total \$ Value of Contracts	Pledged DBE \$ Amount	Pledged OBE \$ Amount
		Total DBE (%)	Total OBE (%)
5	\$31,137,303.64	\$22,552,651.81	\$8,584,651.83
		72.43%	27.57%

Contractor Performance Evaluation Ordinance

In accordance with Article 13, Chapter 1, Division 10, of the City of Los Angeles Administrative Code (L.A.A.C.), the Project Manager and the City Inspector for this construction contract shall submit Contractor Performance Evaluation Reports to the BCA (Department of Public Works) upon completion of this contract.

Peak Hour Construction and Right-of-Way Obstruction Regulations

All contractors must comply with the requirements specified in the Los Angeles Municipal Code Section 62.61 related to peak hour traffic restrictions unless an exemption from the Peak Traffic Hours Prohibition is approved.

Contractor Responsibility Ordinance

All contractors participating in this program are subject to compliance with the requirements specified in the City of Los Angeles Contractor Responsibility Ordinance No. 173677 (Article 14, Chapter 1, Division 10, L.A.A.C.). Failure to comply with all the requirements specified in the ordinance may render this bidder's contract subject to termination pursuant to the conditions expressed therein.

Bid Bond Extension

Access and Excel were both requested to extend their Bid Bonds, which expired on September 20, 2024. The contractors have agreed to extend their Bid Bond until November 15, 2024.

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Conclusion

In view of the above findings, staff recommends that the Board declare Transmittal No. 1 to be unmerited; find Access, first low bidder, to be the lowest responsive, responsible bidder, and award Access the contract for this Project.

STATUS OF FUNDING

The Project is federally funded by the Congestion Mitigation and Air Quality (CMAQ) program and City local funds. The Los Angeles Department of Transportation's (LADOT) Transportation Grant Fund (TGF), Fund No. 655, Department No. 94, Appropriation Unit No. 94RT0I, provides the front funds.

Additional funding comes from the Measure R Local Return, Fund 51Q, Department No. 94, Appropriation Unit No. 94V482 and the 2024-25 Capital and Technology Improvement Expenditure by the Road Maintenance and Rehabilitation Program (Senate Bill 1), Fund No. 59V, Department No. 50, Appropriation Unit No. 50AZCN.

The Director of the Office of Accounting and the Assistant General Manager of the LADOT have identified and verified the following funding sources currently available for this Project.

Fund No.*	Department No.	Appropriation Unit No.	Contract	Contingencies	Total
51Q	94	94V482	\$ 480,100.00	\$ 0.00	\$ 480,100.00
655	94	94RT0I*	\$3,240,419.00	\$ 0.00	\$3,240,419.00
59V	50	50AZCN	\$1,307,651.00	\$502,817.00	\$1,810,468.00
Total			\$5,028,170.00	\$502,817.00	\$5,530,987.00

*Additional \$1,810,419.00 of second CMAQ funds was awarded to augment the \$1,430,000.00 of existing CMAQ funds available. The TGF No. 655, Department No. 94, Appropriation Unit No. 94RT0I was increased in the 2024-25 TGF Appropriation Report to provide the front funds for the second CMAQ funds and submitted to the City Council for approval.

The contract contains a "Financial Liability Clause" which states that "the City's liability under this contract shall only be to the extent of the present City appropriation to fund the contract. However, if the City shall appropriate funds for any succeeding years, the City's liability shall be extended to the extent of such appropriation, subject to the terms and conditions of the contract."

(NM AV GSM JF)

Report reviewed by:


BOE (ADM and SID)

Report prepared by:


Project Award and Control Division


Arsen Voskerchyan, PE
Division Engineer
Phone No. (213) 923-4963

Compliance review performed
and approved by:


Lynda McGlinchey (Oct 23, 2024 16:38 PDT)
Lynda McGlinchey, Program Manager II
Office of Contract Compliance
Bureau of Contract Administration

Statement as to funds approved by:



Miguel De La Peña, SHRM-SCP
Director, Office of Accounting
Fund Ref. 59V/50AZCN/\$1,810,468.00
Date: 10/24/2024


Kevin Minne, PE
Assistant General Manager
Department of Transportation
Fund Ref. 51Q/94V482/\$480,100.00
655/94RT0I/\$3,240,419.00
Date: 10/24/2024

AV/ZG/10-2024-0139_PAC.gva

Respectfully submitted,


For Ted Allen, PE
City Engineer
Bureau of Engineering


John L. Reamer, Jr.
Inspector of Public Works
Bureau of Contract Administration

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Questions regarding this
report may be referred to:
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Email: zemamu.gebrewold@lacity.org

EXCEL PAVING COMPANY

A GENERAL ENGINEERING CONTRACTOR
STATE LICENSE NO. 688659A

P.O. BOX 16405
LONG BEACH, CA 90806-5195
(562) 599-5841
FAX (562) 591-7485

May 24, 2024

TJ Knight
Acting Executive Officer and Director of Administrative Services
Board of Public Works
200 N. Spring St., Room 355
Los Angeles, CA 90012
[Letter sent via FedEx to address above, via fax 213-978-0278 & 213-978-1003; and via email
TJ.Knight@lacity.org, & matthew.castellanos@lacity.org]

**PROJECT: Mid-City Low Stress Bicycle Enhancement Corridors;
Federal I.D No. CML-5006(903); W.O. E1908716**

SUBJECT: Protest of Access Pacific's Bid

To TJ Knight and the City of Los Angeles Public Works Department:

Excel Paving Company (Excel) is protesting the apparent low bidder, Access Pacific (AP), for two reasons.

1. AP did not list a subcontractor for the electrical scope of work, which, based on AP's unit prices, equals about 44% of their whole bid. AP actually deleted the electrical subcontractor originally listed and did not replace it. How can a general contractor without a C-10 electrical license self-perform \$2,185,000 worth of electrical work?
2. AP did not list dollar amounts for the two subcontractors listed on bid proposal page B-7.

The Mid-City Low Stress Bicycle Enhancement Corridors bid was due May 22, 2024, at 1:00pm. After the bid, Excel reviewed AP's bid documents and noticed the deficiencies listed above.

The most egregious error is AP neglecting to list an electrical subcontractor. Per the City's specifications,

"if the Contractor fails to specify a Subcontractor, or if the Contractor specifies more than one Subcontractor for the same portion of Work to be performed under the Contract in excess of one-half of 1 percent of the Contractor's total original Bid or \$10,000.00, whichever is greater, the Contractor agrees that it is fully qualified to perform that portion of Work itself, and that it shall perform that portion itself."

AP does not have a C-10 license and is therefore legally unqualified to self-perform the huge electrical portion of this project.

A few years ago, on another City of Los Angeles bid, AP listed two electrical subcontractors for the same scope of work. Due to the City's specifications (see quote above), listing two subcontractors for the same scope is the same as listing none, and therefore AP had to self-perform

TRANSMITTAL NO. 1

EXCEL PAVING COMPANY

A GENERAL ENGINEERING CONTRACTOR
STATE LICENSE NO. 688659A

P.O. BOX 16405
LONG BEACH, CA 90806-5195
(562) 599-5841
FAX (562) 591-7485

the electrical work. At that time, AP told the City that AP would "hire an electrical laborer from the union hall and make it work." A laborer from the hall does not have a C-10 license either and cannot have the experience to manage over \$2 million dollars of electrical work on this contract.

If a Bidder can self-perform highly technical trades, such as electrical, by simply hiring a few laborers, then Bidders will just pay an electrical contractor's labor on Time and Material and eliminate the rule and spirit of the entire Contractor's Licensing system.

Neglecting to list a subcontractor, especially for a scope of this magnitude, specialty, and large dollar amount, might allow AP to "bid shop" for a "better"/cheaper electrical subcontractor. To do this would be in conflict with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code. Additionally, the City's specs require the Bidders to list the following:

"the name, location of the place of business, telephone number, California State Contractor's License Number and dollar amount of each Subcontractor who will perform Work, labor, service, supply specifically fabricated materials or equipment in an amount in excess of one-half of 1 percent of the Contractor's total Bid, or \$10,000.00, whichever is greater. The Contractor shall list only one Subcontractor for each portion of Work as defined by the Contractor in its Bid."

AP did not list a dollar amount for the two subcontractors listed on proposal page F-7. Excel listed the same striping subcontractor as AP, Cat Tracking, for \$366,500.00. Neglecting to list a subcontractor's dollar amount might allow AP to "bid shop"/reduce the listed subcontractor's price. To do this would also be in conflict with the Subletting and Subcontracting Fair Practices Act.

These rules regarding subcontractors were set forth to eliminate "bid shopping/peddling" after the bid deadline. AP failed to comply with the Subletting and Subcontracting Fair Practices Act by not listing an electrical subcontractor, and by not listing the dollar amounts for the striping and plumbing subcontractors.

AP's bid should be found non-responsive, and Excel should be deemed the lowest, responsible bidder.

Please call/email with any questions or comments.

Sincerely,



Excel Paving Company
Curt Brown, III
President

Bid Results

City of Los Angeles - Department of Public Works - Bureau of Engineering

Mid-City Low Stress Bicycle Enhancement Corridors

W.O. E1908716

Bid Date: May 22, 2024

Council District: 5

Bids Received: 2



SUMMARY			
COMPANY	BID AMOUNT	PERCENTAGE	HIGH/LOW
CITY ENGINEER'S ESTIMATE			
1 ACCESS PACIFIC, INC.	\$ 2,929,186.00	71.66%	HIGH
2 PALP, INC DBA EXCEL PAVING	\$ 5,028,170.00 *	116.06%	HIGH
* Corrected Bid Amount			
AVERAGE (MEAN)	\$ 5,678,490.00	93.86%	HIGH
MEDIAN	\$ 5,678,490.00		