

# BEFORE THE BOARD OF SUPERVISORS COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF AWARD CONTRACT )  
FOR CONSTRUCTION OF AVENUE 152 ) Resolution No. 2018-0685  
SAFETY IMPROVEMENTS PROJECT ) Agreement No. 28785

UPON MOTION OF SUPERVISOR SHUKLIAN, SECONDED BY SUPERVISOR ENNIS, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD AUGUST 14, 2018, BY THE FOLLOWING VOTE:

AYES: SUPERVISORS CROCKER, VANDER POEL, SHUKLIAN, WORTHLEY,  
AND ENNIS  
NOES: NONE  
ABSTAIN: NONE  
ABSENT: NONE



ATTEST: MICHAEL C. SPATA  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY: Milany Ravello  
Deputy Clerk

\*\*\*\*\*

1. Approved and awarded the contract to the lowest responsive and responsible bidder, for construction of Avenue 152 Safety Improvements Project; and
2. Authorized the Chairman to sign the contract after review and approval as to form by County Counsel and upon receipt of certificates of insurance, bonds and evidence that the contractor possesses a valid State Contractors License; and
3. Waived the bid irregularities that have been identified regarding the lowest responsive and responsible bidder; and
4. Allowed funds for contingencies in the amount of \$25,000 plus 5% of the contract amount over \$250,000 to cover unexpected construction conditions; and
5. Authorized the Director of the Resource Management Agency or his designee to approve contract change orders up to the amount of allowed funds for contingencies.

RMA

HAR  
08/14/2018



**Resource Management  
Agency  
COUNTY OF TULARE  
AGENDA ITEM**

**BOARD OF SUPERVISORS**

KUYLER CROCKER  
District One

PETE VANDER POEL  
District Two

AMY SHUKLIAN  
District Three

J. STEVEN WORTHLEY  
District Four

MIKE ENNIS  
District Five

**AGENDA DATE:** August 14, 2018

Public Hearing Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Published Notice Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Advertised Published Notice	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
County Counsel Sign-Off	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
CONTACT PERSON: Celeste Perez    PHONE: (559) 624-7010				

**SUBJECT:** Award Contract for Construction of Avenue 152 Safety Improvements Project

**REQUEST(S):**  
That the Board of Supervisors:

1. Approve and award the contract to the lowest responsive and responsible bidder, for construction of Avenue 152 Safety Improvements Project; and
2. Authorize the Chairman to sign the contract after review and approval as to form by County Counsel and upon receipt of certificates of insurance, bonds and evidence that the contractor possesses a valid State Contractors License; and
3. Waive the bid irregularities that have been identified regarding the lowest responsive and responsible bidder; and
4. Allow funds for contingencies in the amount of \$25,000 plus 5% of the contract amount over \$250,000 to cover unexpected construction conditions; and
5. Authorize the Director of the Resource Management Agency or his designee to approve contract change orders up to the amount of allowed funds for contingencies.

**SUMMARY:**  
Tulare County is the lead agency on the Avenue 152 Safety Improvements Project funded primarily through the Federal Highway Safety Improvement Program (HSIP)

**SUBJECT:** Award Contract for Construction of Avenue 152 Safety Improvements Project

**DATE:** August 14, 2018

administered by the Federal Highway Administration (FHWA) through the California Department of Transportation (Caltrans) as part of the Moving Ahead for Progress in the Twenty First Century (MAP-21) Act. The intent of the HSIP is to utilize program funding in the most cost effective manner towards the goal of system-wide collision reduction.

The purpose of the Avenue 152 Safety Improvements Project (the Project) is to improve the overall safety and traffic operations along the Avenue 152 corridor between State Route 99 and Road 222 (Porterville city limits). Improvements include rumble strips along the entire project length (center and edgeline), guardrails, signs, markings, and flashing beacons. Additional improvements include designated left turn lanes along the Avenue 152 corridor at the intersections of Road 120, Road 160, Road 168, Road 172, and Road 200. Further, the Project includes the installation of a traffic signal with designated left turn lanes at the intersection of Avenue 152 and Road 208.

**Construction Bids**

The Project was authorized to bid by the Board of Supervisors (Resolution No. 2018-0384) on May 22, 2018. Bids were opened on June 27, 2018 and a total of five (5) bids were received, summarized as follows.

<b>Contractor</b>	<b>Total</b>
MAC General Engineering, Inc.	\$1,575,558.78
Yarbs Grading and Paving, Inc.	\$1,810,827.30
Avison Construction	\$1,864,187.00
Granite Construction Co.	\$2,269,525.80
Bush Engineering	\$2,757,987.74

A bid protest letter was received from the second low bidder, Yarbs Grading and Paving, Inc. on June 29, 2018.

Following is a summary of the protest from Yarbs Grading and Paving, MAC General Engineering’s response, Yarbs Grading and Paving’s response to MAC General Engineering’s response, and Tulare County staff findings:

June 29, 2018 Protest Letter from Yarbs Grading & Paving, Inc.

*The reason for this protest is that MAC General Engineer did not list all of the subcontractors that they intend to use on this project, per Caltrans Section 2-1.3C Subcontractor list.*

***Yarbs Grading and Paving Protest Statements:***

*“That MAC Engineering did not list a subcontractor for Bid Item Number 28, Painted Traffic Stripe (2-Coat).*

**SUBJECT:** Award Contract for Construction of Avenue 152 Safety Improvements Project  
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*We received a proposal from the same listed subcontractor, Safety Striping Service, Inc., and their bid included this Bid Item. Every other bidder on this project also listed Safety Striping Service, Inc. for this Item. The item Totals \$70,205.24.*

*MAC Engineering also did not list a specialized subcontractor for Bid Item Number 12, Centerline Rumble Strip and Bid Item Number 22, Shoulder Rumble Strip. These two items total \$24,096.22 on MAC Engineering's bid, which is in excess of the ½ of 1% of the total bid or \$10,000.00, whichever is greater, per Caltrans Section 2-1.10.*

*Installing Rumble Strips is a specialized item requiring specialized equipment and man power. We do not believe that MAC Engineering is able to self-perform 38.996 miles of rumble strips. Every other bidder listed a subcontractor for these items."*

**MAC General Engineering's Response:**

*"The subcontractor list states in the description of work that Safety Striping Service is completing painted traffic stripe with the percent of bid item subcontracted. It is clear this item of work is included in the bid by our subcontractor. This is considered a minor clerical error.*

*It is the intent of MAC General Engineering Inc. at the time of bid submission to complete Bid Item 12, Centerline Rumble Strip and Bid Item 22, Shoulder Rumble Strip with our own forces, this has not changed."*

**Response to MAC General Engineering's Response:**

*On behalf of Yarbs Grading and Paving, Doerksen Tayler Stokes LLP sent a letter on July 6, 2018 in response to MAC General Engineering's Response letter from July 3, 2018. Following is a summary of the July 6, 2018 letter from Doerksen Taylor Stokes LLP for the Avenue 152 Safety Improvement Project.*

*"Bid Item No. 28: MAC General Engineering bid \$70,205 for bid item no. 28, and given its total bid of \$1,575,558, this is 4.5%. Accordingly, unless MAC General Engineering is self-performing this portion of the work it needed to have listed a subcontractor; it did not list a subcontractor, and as made clear from its correspondence of July 3, 2018, it is not self-performing the work. As such, it simply cannot be disputed by that the bid is nonresponsive.*

*The question then, is whether this is a material variance such that the County of Tulare must reject the bid, or on the other hand, whether it is only an immaterial variance that can be waived. In its response of July 3, 2018, MAC General Engineering attempts to excuse its improper Subcontractor List as a "minor clerical error", and this is without any explanation whatsoever as to how the supposed error occurred, and the fact that it might have used a striping subcontractor for other portions of the bid is irrelevant. Regardless, this is not just a minor matter, but rather, is at the heart of the bidding law. The failure to list a subcontractor for bid item no. 28 is in contravention of Public*

**SUBJECT:** Award Contract for Construction of Avenue 152 Safety Improvements Project

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*Contract Code section 4104(a) and the bid documents. The County of Tulare, for its part, has made clear that the failure to accurately complete a Subcontractor List is a material matter, and this is seen by the mandate that the [f]ailure to submit a properly completed Subcontractor List form results in a nonresponsive bid.*

*The bid of MAC General Engineering is admittedly nonresponsive. The failure to list a subcontractor is material and cannot be excused, and as such, the bid must be rejected as nonresponsive.*

*Bid Item Nos. 12 and 22: These two bid items were for the installation of rumble strips on the centerline and shoulder, respectively. Even to the extent that these bid items are considered as separate items for the purposes of Public Contract Code section 4104(a), they amount to \$9,322 and \$14,773, respectively, and are each separately in excess of one-half of one percent of the bid amount.*

*Each of the bidders identified on the Bid Tabulation, except for MAC General Engineering, identified a subcontractor for this portion of the work, and this is for the simple reason that this is specialized item of work requiring specialized equipment. MAC General Engineering, however, justifies its failure to list a subcontractor on the basis that it is self-performing this work. Given the specialized nature of this work, given the fact that all other bidders listed a subcontractor for the rumble strip work, and I expect given the County of Tulare's experience in seeing this work not being self-performed, I would suggest that on the face of the bid there should be a question as to the responsiveness.*

*MAC General Engineering's bid should be determined to be nonresponsive because of its failure to list a subcontractor for bid item no. 28. Regardless, the bid should be found to be nonresponsive for its failure to list a subcontractor for bid item nos. 12 and 22 unless it can demonstrate that it has the ability to self-perform that portion of the work."*

**Tulare County Staff Findings:**

- 1. Bid Item No. 28 "Paint Traffic Stripe" is one of several traffic Striping and Marking related construction items of work for the Avenue 152 Safety Improvements Project. On the "List of Subcontractors" form, MAC General Engineering listed Safety Striping Services as a subcontractor to perform work related to traffic Striping and Marking type of bid items. Although MAC General Engineering failed to list Item No. 28 in the "Bid Item No." column, MAC General Engineering described the construction item under the "Description" column and filled out the percentage in the "% Bid Item" column. By listing the Description and % of Bid Item, it is clear to Tulare County staff that MAC General Engineering's intention for Bid Item No. 28 "Paint Traffic Stripe" was to subcontract Safety Striping Service to perform the work.*

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*Tulare County staff agrees with Yarbs Grading and Paving that failure to provide a bid item number in the "Bid Item No." column is considered a non-responsive bid. However, this omission is not considered a non-waivable failure as detailed in Section 3-1.01 "Award of Contract" of the project contract documents.*

*Per Section 3-1.01, the following are "not-waivable" failures that will cause a bid to be rejected as non-responsive:*

- 1. Failure to sign the bid*
- 2. Failure to furnish the required bid bond or equivalent*
- 3. Failure to include a total amount of the bid*
- 4. Failure to submit a completed addenda certification statement*
- 5. Failure to be listed on the planholders list*
- 6. Failure to submit and sign the required DBE information*

*Further, Section 3-1.01 states that the "Tulare County Board of Supervisors reserves the right to waive other types of discrepancies or failures." That being the case, the Board retains the discretion to waive MAC General Engineering's omission of the Bid Item No.*

*It is staff's determination that waiving MAC General Engineering's omission of the Bid Item No. will not result in an unfair advantage to any specific bidder. As shown in table below, all bid proposals have bid omissions/failures:*

<b>Contractor</b>	<b>Total</b>	<b>Bid Omission(s)/Failure(s)</b>	<b>Waivable</b>
MAC General Engineering, Inc.	\$1,575,558.78	Failure to List "Bid Item No." on List of Subcontractors.	Yes
Yarbs Grading and Paving, Inc.	\$1,810,827.30	Failed to include "Bid Amount" and error in listing "DBE Certification Number" on Exhibit 15-G.	Yes
Avison Construction	\$1,864,187.00	Failed to List Bidder's Bond amount on sheet P-5.	Yes
Granite Construction Co.	\$2,269,525.80	Error in listing "Total Number of ALL Subcontractors" on Exhibit 15-G.	Yes
Bush Engineering	\$2,757,987.74	Failure to complete Exhibit 15-G	No

- 2. MAC General Engineering's bid amount for Bid Item No. 12 "Centerline Rumble Strip" is \$9,322.74 and Bid Item No. 22 "Shoulder Rumble Strip" is \$14,733.48. Each bid item is more than the 1/2 of 1% threshold required for listing of subcontractors. Since MAC General Engineering stated they will self-perform this work, Tulare County staff finds Yarbs Grading and Paving protest on these items to be invalid.*

*That being the case, should MAC General Engineering subcontract Bid Item No. 12 "Centerline Rumble Strip" and Bid Item No. 22 "Shoulder Rumble Strip" after the award of the construction contract, MAC General Engineering shall be subject to penalties per Section 4106 of the Public Contract Code.*

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Section 3-1.01D of the County's bid documents, states that "The Assistant Director – Public Works or his or her designee will inform the protesting and protested bidders in writing of the time and place that the Board of Supervisors will consider the protest(s)."

**Staff Recommendations**

Staff recommends that the Board hear the bid protest by Yarbs Grading and Paving and rebuttal from MAC General Engineering. If no additional information is brought forward on the bid at the hearing, then staff recommends that the BOS waive the irregularities and award the project to MAC General Engineering.

Alternatively, if additional information is presented that demonstrates MAC General Engineering's bid to be non-responsive, then staff recommends the Board waive the irregularities and award the project to the next lowest bidder, Yarbs Grading and Paving, Inc.

If neither the two lowest bids are determined to be response by the Board, then staff recommends that the Board reject all bids and authorize staff to rebid the Avenue 152 Safety Improvements Project.

**FISCAL IMPACT/FINANCING:**

No Net County Cost.

The construction cost for this project, including contingency and construction engineering, is fully funded by Federal Highway Safety Improvements Program (HSIP) funds, Surface Transportation Block Grant Program (STBGP) and Road funds.

If awarded to the low bidder, the project construction cost will be \$1,756,835.78 which comprises of \$1,575,558.78 for construction, \$91,277 for contingencies and \$90,000 for construction engineering.

If awarded to the second low bidder, the project construction cost will be \$2,003,868.30; comprise of \$1,810,827.30 for construction, \$103,041 for contingencies and \$90,000 for construction engineering.

Funding sources for the construction phase of this project are as follows:

Highway Safety Improvements Program (HSIP) Funds:	\$1,104,000
Surface Transportation Block Grant Program (STBGP) Funds:	\$606,592
*Road Funds:	\$46,243.78
<b>Total:</b>	<b>\$1,756,835.78</b>

\*Anticipated funding needs if project is awarded to MAC General Engineering.

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**LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:**

**Safety and Security** – This project will enhance the safety and security of the public by improving the transportation infrastructure for both the general population in the region and the motorists using this facility.

**ADMINISTRATIVE SIGN-OFF:**



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Reed Schenke, P.E.  
Director

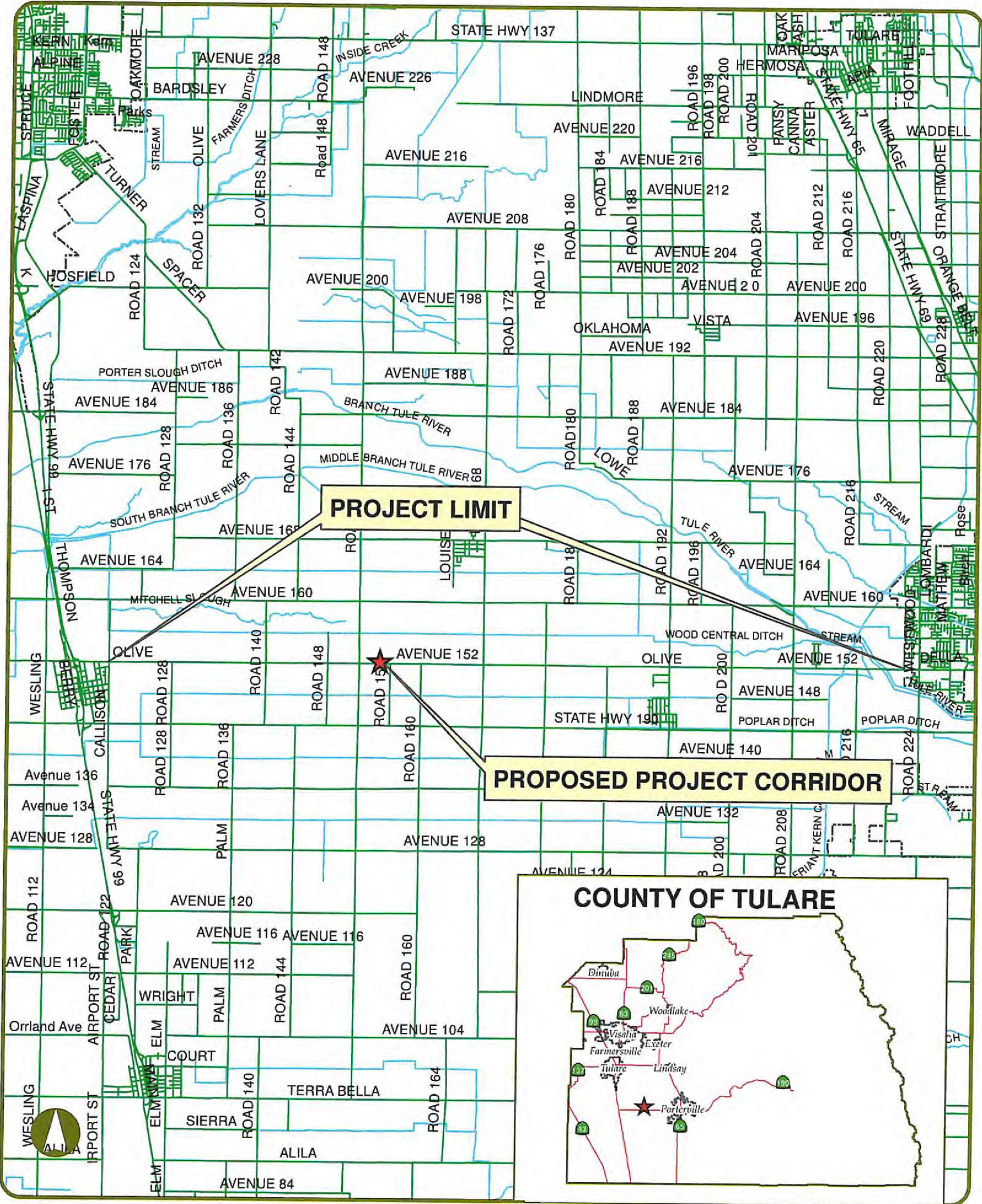
cc: County Administrative Office

Attachment(s) Attachment A – Vicinity Map  
Attachment B – Bid Protest 1 Yarbs Grading and Paving, Inc.  
Attachment C – Response to Bid Protest 1 MAC General Engineering  
Attachment D – Response to Bid Protest 1's Response



## **Attachment A**

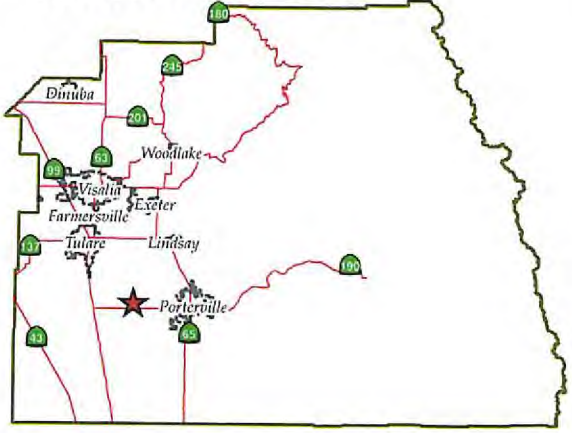
### **Vicinity Map**



**PROJECT LIMIT**

**PROPOSED PROJECT CORRIDOR**

**COUNTY OF TULARE**



## **Attachment B**

**Bid Protest 1 Yarbs Grading and Paving, Inc.**



P.O. Box 87  
Fowler, CA. 93625  
Phone (559) 834-4818  
Fax (559) 834-4897  
www.yarbsgradingandpaving.com  
License # 964071  
DIR # 1000004120

June 29, 2018

County of Tulare, RMA  
Attn: Project Engineer – Public Works  
5961 South Mooney Blvd.  
Visalia, CA 93277

Re: Avenue 152 Safety Improvements Project

Mr. Javed Khan, Project Engineer:

Please consider this a formal protest letter of MAC Engineering's bid for the Avenue 152 Safety Improvements project that bid on June 27, 2018.

The reasons for this protest are:

1) That MAC Engineering did not list a subcontractor for Bid Item Number 28, Painted Traffic Stripe (2-Coat).

We received a proposal from the same listed subcontractor, Safety Striping Service, Inc., and their bid included this Bid Item. Every other bidder on this project also listed Safety Striping Service, Inc. for this item. The item totals \$70,205.24.

2) MAC Engineering also did not list a specialized subcontractor for Bid Item Number 12, Centerline Rumble Strip and Bid Item Number 22, Shoulder Rumble Strip. These two items total \$24,096.22 on MAC Engineering's bid, which is in excess of the ½ of 1% of the total bid or \$10,000.00, whichever is greater, per Caltrans Section 2-1.10.

Installing Rumble Strips is a specialized item requiring specialized equipment and man power. We do not believe that MAC Engineering is able to self-perform **38.996 miles** of rumble strips. Every other bidder listed a subcontractor for these items.

On the basis of what we have presented, MAC Engineering's bid should be considered non-responsive per Caltrans Section 2-1.10 and the project should be awarded to the next lowest and responsive bidder which would be Yarbs Grading and Paving, Inc.

Sincerely,



Jim Leppo

Chief Estimator

## **Attachment C**

### **Response to Bid Protest 1 MAC General Engineering**



July 3, 2018

County of Tulare, RMA  
Attn: Project Engineer – Public Works  
5961 S Mooney Blvd  
Visalia, CA 93277

Re: Avenue 152 Safety Improvements

Mr. Jabeb Khan, Project Engineer:

We are unaware of a company named MAC Engineering. If the letter dated June 29, 2018 by the second low bidder is in protest to MAC General Engineering, Inc. please accept this letter as response to the protest of our bid submitted for the Avenue 152 Safety Improvements Project that bid on June 27, 2018.

- 1) The subcontractor list states in the description of work that Safety Striping Service is completing painted traffic stripe with the percent of bid item subcontracted. It is clear this item of work is included in the bid by our subcontractor. This is considered a minor clerical error.
- 2) It is the intent of MAC General Engineering Inc. at the time of bid submission to complete Bid Item 12, Centerline Rumble Strip and Bid Item 22, Shoulder Rumble Strip with our own forces, this has not changed.

Based on what we have presented the bid submitted by MAC General Engineering Inc. should be considered responsive.

Sincerely,

Marty Adams  
President  
MAC General Engineering, Inc.

## **Attachment D**

### **Response to Bid Protest 1's Response**



Charles L. Doerksen  
Attorney at Law

July 6, 2018

Via Email

Jabed Khan  
Project Engineer  
Department of Public Works  
County of Tulare  
5961 S. Mooney Boulevard  
Visalia, California 93277

Re: Avenue 152 Safety Improvements Project  
Protest of finding that MAC General Engineering is the lowest responsive bid

Dear Mr. Khan:

I am counsel for Yarbs Grading and Paving, Inc. (“Yarbs Grading and Paving”), and I am writing with regard to the County of Tulare’s determination that MAC General Engineering is the lowest responsible and responsive bidder. In that regard, I understand that Yarbs Grading and Paving submitted its protest on June 29, 2018, which protest was premised on MAC General Engineering’s bid being non-responsive because it failed to list a subcontractor for any of bid item nos. 12, 22 or 28. I further understand that on July 3, 2018, MAC General Engineering provided its written response to the protest, and in this response it conceded that it had failed to list Safety Striping Service for bid item no. 28, but that this was merely a “minor clerical error”, and as to bid item nos. 12 and 22, it claims to be self-performing them.

As a prefatory matter, I would note that MAC General Engineering needed to have listed each of its subcontractors providing value in excess of one-half of one percent of the total bid, and this is required by Public Contract Code section 4104(a). This requirement is re-affirmed by the bid documents, and in particular the Subcontractor List form, and this document states that the *[f]ailure to submit a properly completed Subcontractor List form results in a nonresponsive bid.* What this makes clear, is that if a contractor is required to list a subcontractor and fails to do so, there is no discretion; rather, this failure “results in a nonresponsive bid”. With this in mind, following are my thoughts with regard to the various bid items.

A. Bid Item No. 28. MAC General Engineering bid \$70,205 for bid item no. 28, and given its total bid of \$1,575,558, this is 4.5%. Accordingly, unless MAC General Engineering is self-performing this portion of the work it needed to have listed a subcontractor; it did not list a subcontractor, and

**Doerksen Taylor Stokes LLP**  
**Trial Lawyers**

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Jabed Khan  
July 6, 2018  
Page 2

as made clear from its correspondence of July 3, 2018, it is not self-performing the work. As such, it simply cannot be disputed by that the bid is nonresponsive.

The question then, is whether this is a material variance such that the County of Tulare must reject the bid, or on the other hand, whether it is only an immaterial variance that can be waived. In its response of July 3, 2018, MAC General Engineering attempts to excuse its improper Subcontractor List as a "*minor clerical error*", and this is without any explanation whatsoever as to how the supposed error occurred, and the fact that it might have used a striping subcontractor for other portions of the bid is irrelevant. Regardless, this is not just a minor matter, but rather, is at the heart of the bidding law. The failure to list a subcontractor for bid item no. 28 is in contravention of Public Contract Code section 4104(a) and the bid documents. The County of Tulare, for its part, has made clear that the failure to accurately complete a Subcontractor List is a material matter, and this is seen by the mandate that the *[f]ailure to submit a properly completed Subcontractor List form results in a nonresponsive bid.*"

The bid of MAC General Engineering is admittedly nonresponsive. The failure to list a subcontractor is material and cannot be excused, and as such, the bid must be rejected as nonresponsive.

- B. Bid Item Nos. 12 and 22. These two bid items were for the installation of rumble strips on the centerline and shoulder, respectively. Even to the extent that these bid items are considered as separate items for the purposes of Public Contract Code section 4104(a), they amount to \$9,322 and \$14,773, respectively, and are each separately in excess of one-half of one percent of the bid amount.

Each of the bidders identified on the Bid Tabulation, except for MAC General Engineering, identified a subcontractor for this portion of the work, and this is for the simple reason that this is specialized item of work requiring specialized equipment. MAC General Engineering, however, justifies its failure to list a subcontractor on the basis that it is self-performing this work. Given the specialized nature of this work, given the fact that all other bidders listed a subcontractor for the rumble strip work, and I expect given the County of Tulare's experience in seeing this work not being self-performed, I would suggest that on the face of the bid there should be a question as to the responsiveness.

MAC General Engineering's bid should be determined to be nonresponsive because of its failure to list a subcontractor for bid item no. 28. Regardless, the bid should be found to be nonresponsive for its failure to list a subcontractor for bid item nos. 12 and 22 unless it can demonstrate that it has the ability to self-perform that portion of the work.

**Doerksen Taylor Stokes LLP**  
**Trial Lawyers**

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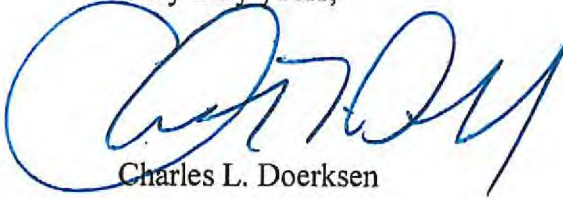
Jabed Khan

July 6, 2018

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Thank you for your consideration, and if any clarification is required please do not hesitate to contact me.

Very truly yours,



Charles L. Doerksen

cc: Yarbs Grading and Paving, Inc.



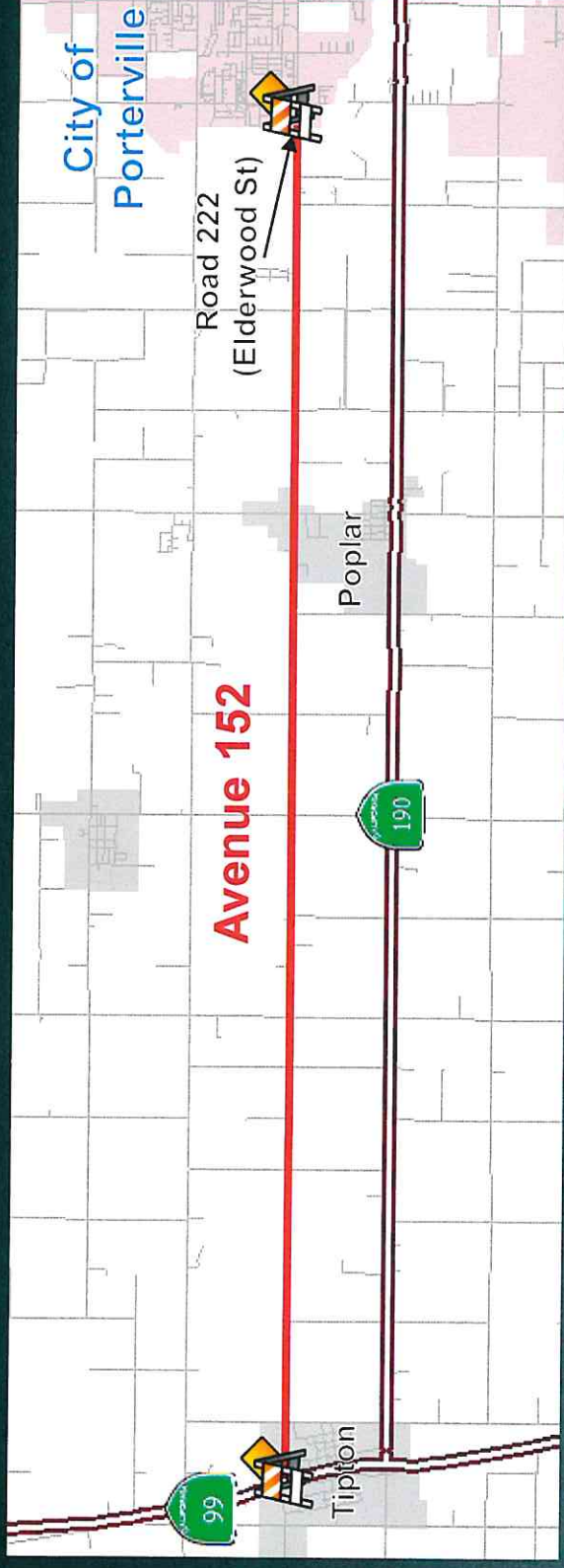
# Award Contract for Construction of Avenue 152 Safety Improvements Project

Presented by the  
Tulare County Resource Management Agency  
August 14, 2018

# Background

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- On May 22, 2018, your Board:
  - Approved the authorization to bid the Avenue 152 Safety Improvements Project (the Project)
  - Purpose of the Project is to improve the overall safety and traffic operations along the Avenue 152 corridor between State Route 99 and Road 222 (Porterville city limits)

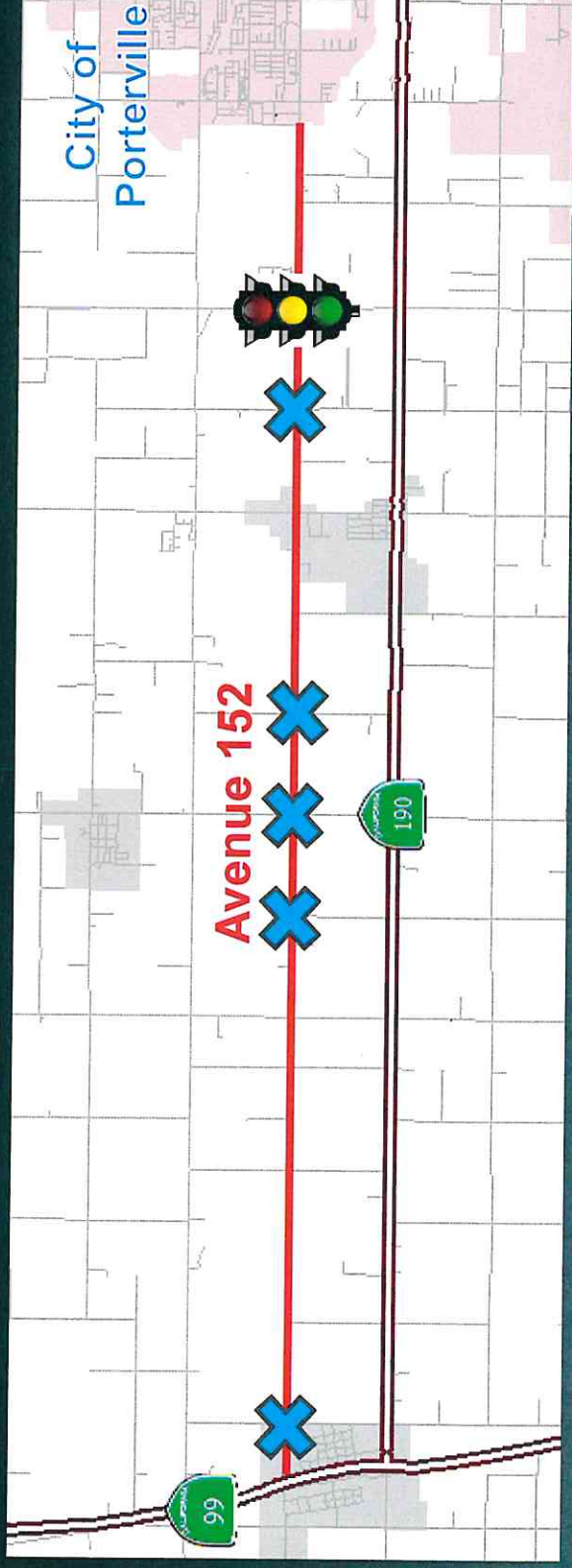


# Project Overview

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## Avenue 152 Safety Improvements

- Includes rumble strips (center and edgeline) along the entire project length, guardrails, signs, markings, and flashing beacons
- Addition improvements include:
  - Designated left turn lanes at the intersections of Road 120, Road 160, Road 168, Road 176, and Road 200 (see  below)
  - Installation of traffic signal with designated left turn lanes at the intersection of Avenue 152 and Road 208 (see  below)



# Bid Results

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- **Five (5) bids** were received on June 27, 2018
- Ready to Award Contract
- Construction Begins: **Fall 2018**
- Period of Construction: **Appx. 4 Mo.**

Contractor		Total Base
1	<b>MAC General Engineering, Inc.</b>	<b>\$1,575,558.78</b>
2	Yarbs Grading and Paving, Inc.	\$1,810,827.30
3	Avison Construction	\$1,864,187.00
4	Granite Construction Co.	\$2,269,525.80
5	Bush Engineering	\$2,757,957.74
<b>Engineer's Estimate</b>		<b>\$2,092,326.20</b>

Yarbs Grading and Paving's Protest is summarized as follows:

1. Issue #1
  - MAC General Engineering did not list a subcontractor for Bid Item No. 28 "Painted Traffic Stripe (2-Coat)"
2. Issue #2
  - MAC General Engineering did not list a specialized subcontractor for Bid Item No. 12 "Centerline Rumble Strip" and Bid Item No. 22 "Shoulder Rumble Strip" which are specialized items requiring specialized equipment and labor
  - Each item is in excess of 1/2 of 1% of the bid amount or \$10,000 per Caltrans Section 2-1.10
  - Yarbs Grading and Paving believes MAC Engineering will not be able to self-perform approximately 39 miles of rumble strips

MAC General Engineering's Response is summarized as follows:

1. Response to Issue #1
  - On the "List of Subcontractors" form, Safety Striping Service is completing the painted traffic stripe. It was clear Bid Item No. 28 was included in the bid by the subcontractor. It is a minor clerical error.
2. Response to Issue #2
  - MAC General Engineering's intent (at the time of bid submission) is to complete Bid Item No. 12 "Centerline Rumble Strip" and Bid Item No 22 "Shoulder Rumble Strip" using their own forces



# Bid Protest (continued)

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Yarbs Grading and Paving's Response is summarized as follows:

## 1. Response to Issue #1

- MAC General Engineering made it clear that they are not self-performing the work
- Bid Item No. 28 "Painted Traffic Stripe (2-Coat)" is 4.5% of the total bid which requires a subcontractor to be listed if MAC General Engineering is not self-performing the work
- MAC General Engineering's bid should be determined nonresponsive because of its failure to list a subcontractor for Bid Item No. 28 per Public Contract Code section 4104(a) and the bid documents

## 2. Response to Issue #2

- "Rumble Strip" items of work are specialized item of work requiring specialized equipment
- All other bidders listed a subcontractor for the "Rumble Strip" work
- MAC General Engineering's bid should be found nonresponsive for its failure to list a subcontractor for Bid Item Nos. 12 and 22 unless it can demonstrate that it has the ability to self-perform that portion of the work

# Staff Findings

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## Staff Findings for Issue #1

- On the "List of Subcontractors" form, MAC General Engineering listed **Safety Striping Services** as a subcontractor to perform work related to traffic Striping and Marking type of bid items
- MAC General Engineering failed to list Item No. 28 in the "Bid Item No" column, however, the construction items were described and the percentage of the item was provided

Name	Subcontractor Information			Work Portion		
	Address	DIR Number	Lic. No.	Bid Item No.	Description	% of Bid Item
Safety Striping Service	6868 Ave 305 Goshen, CA 93227	10000 1674	308669	a) 7	Lead Compliance	83.4
				b) 13	Remove Stripe	83.4
				c) 14	Remove Thermo	83.4
				d) 27	Install Thermo	83.4
Tully Consulting Group	1650 N Lincoln St Suite A Dixon, CA 95620	10000 24960	C64354	a) 6	Paint Traffic Stripe	82.3
				b)		
				c)		
				d)		
				a) 6	Prepare w/PCP	83.4
				b)		
				c)		
				d)		

# Staff Findings (continued)

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## Staff Findings for Issue #1 (continued)

- Failure to provide a bid item number is considered non-responsive, however, this omission is not considered a non-waivable failure as detailed in Section 3-1.01 “Award of Contract”
- Per Section 3-1.01, Board of Supervisors can waive omission and irregularities provided that the waiver does not result in unfair advantage to any specific bidder
- Waiving MAC General Engineering’s of the “Bid Item No.” in the “List of Subcontractors” will not result in an unfair advantage to any specific bidder

# Staff Findings (continued)

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## Staff Findings for Issue #2

- MAC General Engineering's bid amount for Bid Item No. 12 "Centerline Rumble Strip" is \$9,322.74 and Bid Item No. 22 "Shoulder Rumble Strip" is \$14,733.48, and each bid item is more than the 1/2 of 1% threshold required for listing of subcontractors
- However, MAC General Engineering stated they will self-perform the "Rumble Strip" items of work
- Therefore, not required to list a subcontractor

# Staff Recommendations:

- That the Board hear bid protests
- Consider protest and information brought forward
- If no additional information is brought forward, then staff recommends the BOS waive the irregularities and award the project to MAC General Engineering, Inc.
- If neither the two lowest bids are determined to be responsive by the Board, then staff recommends that the Board rejects all bids and authorizes staff to rebid the project

# Requests:

- Approve and award the contract to the lowest responsive and responsible bidder MAC General Engineering Inc., for construction of Avenue 152 Safety Improvements Project; and
- Authorize the Chairman to sign the contract after review and approval as to form by County Counsel and upon receipt of certificates of insurance, bonds and evidence that the contractor possesses a valid State Contractors License; and
- Waive the bid irregularities that have been identified regarding the lowest responsive and responsible bidder; and
- Allow funds for contingencies in the amount of \$25,000 plus 5% of the contract amount over \$250,000, to cover unexpected construction conditions; and
- Authorize the Director of the Resource Management Agency or his designee to approve contract change orders up to the amount of allowed funds for contingencies.