



# Board Agenda Item 12

---

DATE: May 25, 2021

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director  
Department of Public Works and Planning

SUBJECT: Award Contract 20-20-C American Avenue and Golden State Blvd Intersection Improvements

RECOMMENDED ACTION(S):

- 1. Adopt plans and specifications for Contract No. 20-20-C, American Avenue and Golden State Blvd Intersection Improvements.**
- 2. Hear and consider protest from apparent second low bidder, Avison Construction, 40434 Brickyard Dr., Madera, CA 93636, regarding the proposed award of Contract No. 20-20-C to the apparent low bidder, AJ Excavation, 514 N. Brawley Avenue, Fresno, CA 93706.**
- 3. Find that AJ Excavation, is the lowest responsible bidder for Contract No. 20-20-C, and that the deviation from strict bidding requirements in AJ Excavation's bid is immaterial and is hereby waived, in the discretion of the Board and in furtherance of the best interest of the County.**
- 4. Award Contract No. 20-20-C to the low bidder, AJ Excavation in the amount of \$3,148,584.**

Approval of the recommended actions will authorize the award of a budgeted road improvement project funded by the County's SB-1 Road Maintenance and Rehabilitation Account to improve the intersection of American Avenue and Golden State Boulevard through realigning the intersections and installing new traffic signals. This item pertains to a location in District 4.

ALTERNATIVE ACTION(S):

After considering the bid protest, your Board may instead choose to reject the low bid from AJ Excavation as non-responsive, and award Contract 20-20-C to Avison Construction in the total amount of \$3,241,408.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. The anticipated construction cost for the American Avenue and Golden State Blvd Intersection Improvements project is \$3,318,513, based on the low bid of \$3,148,584 and the Director's allowance for change orders of \$169,929. The project will be funded with the County's SB-1 Road Maintenance and Rehabilitation Account. Sufficient appropriations and estimated revenues for the project are included in the Department of Public Works and Planning - Roads Org 4510 FY 2020-21 Adopted Budget and in the FY 2021-22 Public Works and Planning - Roads Org 4510 Proposed Budget.

DISCUSSION:

The work to be done consists, in general, of making improvements to the intersection of American Avenue and Golden State Boulevard, including the intersections with Peach Avenue north and south of American Avenue. The existing roadway on American Avenue from SR99 to approximately 860 feet east of Peach Avenue will be reconstructed and realigned with 12-foot travel lanes, left and right turn lanes and 4-foot shoulders on each side. Golden State Boulevard will be reconstructed from approximately 1,252 feet south of American Avenue to approximately 846 feet north of American Avenue, left and right turn lanes will be added and traffic signals will be installed at the intersection of American Avenue and Golden State Boulevard. Peach Avenue will be reconstructed from American Avenue north for approximately 160 feet and from Golden State Boulevard south for approximately 320 feet. Union Pacific Railroad (UPRR) will perform construction at the Railroad Crossing concurrently with the intersection improvements. Agreements with UPRR for their construction and relocation were authorized by the Board on December 15, 2020 and on January 12, 2021.

The project was advertised on April 6, 2021 and a bid opening was held on May 6, 2021. Seven bids were received. The low bid of \$3,148,584, from A J Excavation was \$364,837 or 10.38% lower than the engineer's estimate of \$3,513,421.

The bidders and their respective bid amounts are shown below:

<u>Bidder</u>	<u>Bid Amount</u>
A J Excavation	\$3,148,584.00
Avison Construction	\$3,241,408.00
Agee Construction	\$3,374,992.00
Yarbs Paving & Grading	\$3,510,391.00
American Paving Company	\$3,519,842.95
CalValley Construction	\$3,659,948.00
Granite Construction Company	\$3,730,760.55

There was a single irregularity in the bid package submitted by the low bidder, AJ Excavation (AJ), which was that they were unable to submit their original bid bond prior to the bid opening deadline. Instead, AJ submitted a copy of their fully executed bid bond with their electronic bid and submitted the original bid bond approximately two hours after the bid opening. The second low bidder, Avison Construction (Avison) submitted a bid protest letter on the basis of that irregularity, a copy of which is provided as Attachment A to this report. A copy of AJ's response to Avison's bid protest letter is provided as Attachment B to this report.

When the COVID-19 public health emergency forced the closure of the Department's customary bid reception desk last year, the Department started accepting electronic bids, as permitted by California Public Contract Code Section 1601, via the Department's [www.BidExpress.com](http://www.BidExpress.com) page. Accordingly, the specifications for County projects were modified at that time to include instructions regarding the submittal of electronic bids, including the requirement for contractors to submit bid security for 10% of the amount of the bid with their proposal.

The Department understood that not all surety companies and contractors would have made the modification to their operations to allow their utilization of this electronic bidding option. For this reason, those instructions specifically stated that if a bidder was unable due to the COVID emergency to provide the original or an electronic bid bond prior to bid opening, staff would request that your Board consider exercising your discretion to waive that bidding irregularity, but only if a scanned copy of the original bid security was attached to the bid and the original bid security was hand-delivered within 24 hours of the bid opening.

When this project was advertised on April 6, 2021, those instructions were listed in Special Provisions Section 2-1.33D of the project specifications, an excerpted copy of which is provided as Attachment C to

this report. Five of the seven bids received on this project were submitted electronically, however, only three of the bidders submitted electronic bid bonds. AJ was the only bidder to submit a scanned copy of its fully executed original bid bond, and as noted did hand-deliver the original very shortly (and well within 24 hours) thereafter.

This situation has arisen on only one prior occasion, which also involved Avison. Your Board elected to exercise your discretion to waive this same irregularity in a bid submitted by Avison, when it was awarded Contract No. 19-08-C, Auberry Road / Copper Avenue Traffic Signal Installation Project, on May 12, 2020.

Avison's bid protest essentially contends that because bidders should be sufficiently acclimated to the use of electronic bidding by now, and also based on the County having lifted its local COVID-19 state of emergency on April 13, 2021, the County should not waive the irregularity in AJ's bid. However, the instructions in the project specifications were published before your Board rescinded the local state of emergency, and it appears that AJ did comply with the specified conditions for staff to ask your Board to consider waiving the irregularity. In addition, the state and federal declared states of emergency remain in effect, and many of the measures initiated to prevent the spread of infection (such as teleworking) do currently remain in place.

As was the case when the same bidding discrepancy was waived for Avison approximately one year ago, AJ Excavation did not receive any unfair competitive advantage over other bidders merely because their original bid bond was submitted after bid opening. Accordingly, it has been determined, in consultation with County Counsel, that your Board may, in the exercise of your discretion, elect to waive this deviation as immaterial.

OTHER REVIEWING AGENCIES:

Caltrans provides oversight relating to traffic and work adjoining SR99.

REFERENCE MATERIAL:

BAI #36, January 12, 2021  
BAI #83, December 15, 2020  
BAI #34, May 12, 2020

ATTACHMENTS INCLUDED AND/OR ON FILE:

Location Map  
Attachment A - Bid Protest letter from Avison Construction dated May 6, 2021  
Attachment B - Letter dated May 11, 2021 from AJ Excavation (response to Bid Protest)  
Attachment C - Excerpted Copy of Specifications Section 2-1.33D (Special Provisions)

CAO ANALYST:

Ron Alexander