



October 17, 2014

*Via Fax & Email*

Gordon N. Ball Inc.  
Earl Seaberg, Chief, Office of Contract Awards & Services  
John McMillan, Deputy Division Chief  
General Engineering Contractors Office Engineer – MSC 43  
California Department of Transportation  
1727 30<sup>th</sup> Street  
Sacramento, CA 95816-7005

Tel 925.838.5675 Reference: Contract No. 04-4S0504  
04-SCL-09-4.2  
Fax 925.838.5915 Bid Date: October 8, 2014

**Subject: Protest all Bidders – Electronic Bidding System Failure**

Gentlemen:

333 Camille Avenue  
Alamo, CA 94507

Gordon N. Ball, Inc. hereby submits its protest as to all bids submitted as a result of a failure of the Electronic Bidding Bidders' Exchange website. We request that all submitted bids be rejected, and the project be re-bid, so that all responsive bids can be properly accepted. Alternatively, we request that the Department accept the bid that was submitted by Gordon N. Ball, Inc. but improperly not recognized by the Bidders' Exchange Website. The bid submitted by Gordon N. Ball, Inc. is the lowest responsive bid submitted.

The bid documents state:

The Department will receive bids until 2:00 p.m. on the bid open date via Bid Express web site. Bids received after this time will not be accepted. For more information refer to the Electronic Bidding Guide at the Bidder's Exchange web site.

The submission of the electronic bid for this contract was initiated by Gordon N. Ball, Inc. at approximately 13:54 hrs. on October 8, 2014. At that time, the Bidder's Exchange Website would not properly respond to our repeated attempts to process. At 2:00 p.m., and more specifically, at 14:00:28 hrs, Gordon N. Ball, Inc. finally received confirmation that the information was processed by the Bidders' Exchange Website; it was not yet 2:01 p.m.

Following the inability of the website to receive Gordon N. Ball, Inc.'s timely submitted bid, the website immediately transmitted "Return Code 26," stating that "The cutoff time for this proposal has passed." In fact, that was not the case. As documented by the log that is available for independent review by the Department, the subject electronic bid was in fact submitted and acknowledged as received, prior to the stated bid closing time of 14:00:59, and thereby the return code transmitted was in error.

The time is "2:00 p.m." until it is 2:01 p.m. The timing of Gordon N. Ball's submission is in conformance with the bid submission requirements of the contract.

Even if Gordon N. Ball, Inc.'s bid were construed as late by seconds, which it was not, courts have repeatedly upheld public agencies' ability to award contracts to bidders whose bids were received later than the published bid time. Gostovich v. West Richland, 75 Wash.2d 583, 452 P.2d 737, 740 (1969); Townsend v. McCall, 262 Ala. 554, 80 So.2d 262 (1955); Hewitt Contracting Co. v. Melbourne Regional Airport Auth., 528 So.2d 122 (Fla Ct. App. 1998); William Young & Co. v. West Orange Redevelopment Agency, 125 N.J. Super. 440, 311 A.2d 390 (App. 1973); see also 10 McQuillen, Municipal Corporations, § 29.70 (3d ed. 1990).

For example, in a case where bids were to be opened at 2:00 p.m., a contractor, Cleveland Wrecking, telephoned the agency to advise that its representative would be a few minutes late because of an airline delay. The agency waited for Cleveland's representative, who arrived at 2:02 p.m. The Court held that the agency acted properly in awarding the contract to Cleveland, reasoning:

Under the facts here, it cannot be argued seriously that the bidders other than Cleveland were disadvantaged competitively by waiting for possibly seven minutes. There is not the slightest suggestion of fraud and collusion ... Under the circumstances presented here we view the delay as a minor irregularity which was properly waived by the Agency under its inherent discretionary power ancillary to its duty to secure, through competitive bidding, the lowest responsible offer.

William Young & Co. v. West Orange Redevelopment Agency, 125 N.J. Super. 440, 444, 311 A.2d 390, 392 (App. 1973).

Thus, if Gordon N. Ball, Inc.'s bid were deemed to have been received after 2:00 p.m., which was certainly not the case, even then the project should be awarded to Gordon N. Ball, Inc. Any purported untimeliness was not of Gordon N. Ball, Inc. making. The owner's agent apparently caused any delay, by maintaining a website which could not handle the heavy flow on bid day. Any protest by a contractor submitting a higher bid would be groundless.

We would appreciate your advising us by the close of business on Wednesday, October 22, 2014, whether the contract will be awarded to Gordon N. Ball, Inc. In the event that the contract is to be awarded to another bidder, we would request a hearing at which we could make a meaningful presentation concerning the facts related to this bid.

GORDON N. BALL, INC.



Hal Stober  
President

**Hal Stober**

---

**From:** Samir Ashoo  
**Sent:** Wednesday, October 15, 2014 4:03 PM  
**To:** Hal Stober  
**Cc:** Tristen Davis  
**Subject:** Bid 04-4S0504 Report  
**Attachments:** Log.txt; Response.txt

Hal,

Per your request, I have prepared the following report regarding the bid submission on October, 8th 2014.

I have reviewed the submission logs from the BidEx software currently installed on the PC named (GNB-EBID) at Gordon N. Ball. This is the PC used to submit ebids to CalTrans. Please note the following excerpt from the log from that PC:

```
Log Created at [14/10/08 14:00:14]
... lines from log removed ...
[14/10/08 14:00:27] Debug: Post:
pszPostFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\Post.txt]
pszResponseFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\Respo
nse.txt]
[14/10/08 14:00:27] Debug: Post: User agent set to [User-Agent: Expedite
Version 5.11a]
[14/10/08 14:00:28] Debug: PostBid: Post returned returncode=26 [The
cutoff time for this proposal has passed]
```

From the log file above you can see that the bid submission process was started at [14/10/08 14:00:14] and completed by [14/10/08 14:00:28].

After speaking to GNB staff regarding the in person bidding process, when bid's were presented, CalTrans accepted bid until 2:00:59. The person at the desk continued accepting bids until the clock was at 2:01:00.

The Specification Book reads as follows: "The Department will receive bids until 2:00 p.m.". It is my contention that this spec is vague and not concise enough for the bidding technology being used today. The specification does not specify granularity of seconds.

Therefore based on the following facts:

- Historic precedents observed when submitting in person
- The spec book does not specify a granularity in seconds for the submission time
- Your submission was completed by 2:00:28

It is my contention that you bid should have been accepted by the BidEx servers.

--  
Samir E. Ashoo

A & B Computer Services  
PO Box 5813  
Concord, CA 94524

<http://www.AandBComputers.com>

Phone: +1 (925) 250-5165

Fax: +1 (925) 524-0244

## Response.txt

## [General]

returncode = 26  
message = The cutoff time for this proposal has passed  
datetime = EST  
errdetail =

## [Message Header]

## [Message Body]

## BID SUBMISSION RECEIPT

Vendor Name = Gordon N. Ball, Inc.  
Vendor Addr1 = 333 Camille Avenue  
Vendor Addr2 =  
Vendor City = Alamo  
Vendor State = CA  
Vendor Zip = 94507  
Vendor Phone = 9258385675  
Vendor ID = VC0000101123

Digital ID = Hal\_Stober\_vc0000101123  
FingerPrint = 0e d7 7d e2 c1 6a 4a 05 e2 d8 45 9b 4e d8 a6 f8 e0 86 7d 11  
Agency = CALTRANS  
Letting ID = 04-4S0504c  
Letting Date =  
CallOrder = 1  
Amendments = 3  
Proposal ID = 04-4S0504  
Bid Version = 5.11a  
Protocol Ver = 2.00  
Submission Time = 10/08/2014 05:00:28 PM EST  
Bid MD5 = 82 59 21 31 7c f9 33 f5 f0 46 1f d2 59 96 38 c1

Your encrypted submission relating to Call Order 1 dated 10/08/2014 was received at the Bid Submission time indicated above. Receipt of this submission does not imply that it complies with the substantive or procedural requirements of the state of CALTRANS. The form and sufficiency of your submission will be determined by the CALTRANS Department of Transportation upon the opening of bids.

This is your bid submission receipt. This bid submission replaces any prior submissions for this proposal.

Bid Receipt Ver. 4.0a

## Log.txt

```
Log Created at [14/10/08 14:00:14]
[14/10/08 14:00:14] Message: URL List cleared
[14/10/08 14:00:14] Message: URL added to list:
[http://www.bidx.com/cgi-bin/expedite]
[14/10/08 14:00:27] Debug: EncryptAndSignProposal: pszID=[Hal_Stober_vc0000101123],
pszPWD=[xxxx] pProp=[002CE7D8]
[14/10/08 14:00:27] Message: Encrypt And Signing Proposal: Contid=[04-4S0504]
[14/10/08 14:00:27] Debug: EncryptAndSignProposal:
szProposalSpec=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\04-4S0504.ebs]
szEncryptSpec=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\04-4S0504.enc_not
_signed]
szSignSpec=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\04-4S0504.enc]
[14/10/08 14:00:27] Message: Proposal saved to
[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\04-4S0504.ebs]
[14/10/08 14:00:27] Message: Proposal encrypted to
[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\04-4S0504.enc_not_signed]
[14/10/08 14:00:27] Message: Proposal signed to
[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\04-4S0504.enc]
[14/10/08 14:00:27] Debug: VerifyBidPackage: pProp=[002CE7D8]
pszEncryptedSignedFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\04-4S050
4.enc], pszID=[Hal_Stober_vc0000101123], pszPWD=[xxxx]
[14/10/08 14:00:27] Message: Verifying Bid Package for Proposal 04-4S0504
[14/10/08 14:00:27] Debug: Bid Submit Package Test Read Status = [0]
[14/10/08 14:00:27] Debug: SetKey: pszSignKeyID=[Hal_Stober_vc0000101123]
pszSignKeyPWD=[xxxx]
[14/10/08 14:00:27] Debug: PostBid: pProp=[002CE7D8]
pszEncryptedSignedFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\04-4S050
4.enc] at wed Oct 08 14:00:27 2014
[14/10/08 14:00:27] Message: Posting Bid: Contid=[04-4S0504]
[14/10/08 14:00:27] Debug: BuildPostBidParamFile: pProp=[002CE7D8],
pszParmFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\Parameters.txt]
pszEncryptedSignedFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\04-4S050
4.enc] pszBidWDCalls=[]
[14/10/08 14:00:27] Debug: SignFile:
pszDestFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\Parameters.txt]
pszSrcFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\UnsignedParameters.t
xt]
[14/10/08 14:00:27] Debug: BuildPostFile:
pszPostFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\Post.txt]
pszParmFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\Parameters.txt]
pszDataFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\04-4S0504.enc]
[14/10/08 14:00:27] Debug: SpoolFile: pFile=[06AFFDD0]
pszInFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\Parameters.txt]
pszSectionName=[ParmFile]
[14/10/08 14:00:27] Message: Spooling File
[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\Parameters.txt] as field name
[ParmFile]
[14/10/08 14:00:27] Debug: SpoolFile: pFile=[06AFFDD0]
pszInFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\04-4S0504.enc]
pszSectionName=[DataFile]
[14/10/08 14:00:27] Message: Spooling File
[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\04-4S0504.enc] as field name
[DataFile]
[14/10/08 14:00:27] Debug: Post:
pszPostFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\Post.txt]
pszResponseFile=[C:\ProgramData\ExpediteLogs\SubmitBid_141008_140014\Response.txt]
[14/10/08 14:00:27] Debug: Post: User agent set to [User-Agent: Expedite Version
5.11a]
[14/10/08 14:00:28] Debug: PostBid: Post returned returncode=26 [The cutoff time for
this proposal has passed]
```

Tristen Davis

**From:** Tristen Davis  
**Sent:** Wednesday, October 15, 2014 1:58 PM  
**To:** Tristen Davis; Hal Stober  
**Subject:** Screen Shot of Bid Express Owner Screen

Zoom Meeting ID: 116-830-506

CALTRANS: Letting of October 15, 2014 - Windows Internet Explorer  
 https://bidx.com/ca/letting?lettingid=01-080804

File Edit View Favorites Tools Help

Favorites CALTRANS: Letting of October 15, 2014

**Bid Express**  
 SOLVING THE BIDDING PROCESS

CALTRANS **Letting** Search Advantage Bid Tab Analysis Small Business Network

California Department of Transportation

List of Lettings > October 15, 2014

Manage this Letting

◀ Letting of October 15, 2014 ▶

Letting ID: 01-080804  
 Opening Time: 02:01:00 PM PDT  
 Cut-Off Time: 02:01:00 PM PDT

Proposal	Call Order	Items	Amendments	Plan Sh
01-080804	1	46	1	
CONSTRUCTION ON STATE HIGHWAY IN DEL NORTE COUNTY NEAR KLAMATH FROM 0.4 MILES NORTH OF KLAMATH RIVER BRIDGE TO HIGH PRA on Route 101				
[1 Active Proposal]				

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Audio Settings Invite Participants (30)

Tristen Davis

From: Tristen Davis  
Sent: Thursday, October 16, 2014 1:55 PM  
To: Tristen Davis

Zoom Meeting ID: 116-830-506

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CALTRANS: Letting of October 16, 2014 - Windows Internet Explorer  
<https://bidx.com/ca/letting?lettingid=02-4G00U4>  
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California Department of Transportation

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◀ Letting of October 16, 2014 ▶

Letting ID: 02-4G00U4  
 Opening Time: 02:01:00 PM PDT  
 Cut-Off Time: 02:01:00 PM PDT

Proposal	Call Order	Items	Amendments	Plan Sh
02-4G00U4	1	35	0	

CONSTRUCTION ON STATE HIGHWAY IN SISKIYOU COUNTY NEAR WEED FROM ANGEL VALLEY ROAD TO MAPLE AVENUE In District 02 on Route 9

(1 Active Proposal)

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Audio [M] Settings Invite Participants (28)

Good Afternoon Mr. Seaberg:

Attached please find our bid protest in reference to the following bid:

Contract No. 04-4S0504

04-SCL-09-4.2

Bid Date: 10/8/14

Please feel free to email me should you have any questions.

---

Tristen Davis

Gordon N. Ball, Inc.

O: 925.838.5675

F: 925.838.5915

C: 925.575.0032 or 925.787.2632