

MBI Midstate Barrier, Inc.
P.O. Box 30550
Stockton, CA 95213-0550

(209) 944-9565 • FAX (209) 944-9569
LICENSE NO: 529261

June 10, 2015

State of California Department of Transportation
Division of Engineering Services
Office Engineer
1727 30th Street MS-43
P.O. Box 168041
Sacramento, CA 95816-8041

Attn: Mr. John McMillan, Deputy Division Chief

Re: Contract 10-0X5404
10-SJ-5-41.7/45.9
Bid Opening on April 21, 2015
Non-Responsive Bid letter dated June 9, 2015

Dear Mr. McMillan:

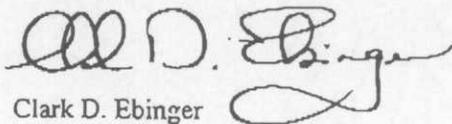
Midstate Barrier, Inc. (MBI) received a letter dated June 9, 2015 from the Department of Transportation (Caltrans) in response to a protest letter sent by MBI dated May 12, 2015 regarding the Caltrans position that MBI's bid is nonresponsive. MBI again protests this decision for the following reasons.

In the letter sent by Caltrans dated June 9, 2105, the third paragraph, second sentence states "Bidders are required to follow the bidding instructions and to review the Notice to Bidders and Special Provisions of the contract..."(Attachment A). Referencing Attachment B, the Notice to Bidders for the above referenced contract, midway down it instructs bidders to "refer to the Electronic Bidding Guide at the Bidder's Exchange web site." To follow this instruction, you go to the Contractors Corner on the Caltrans website and click on "Electronic Bidding" (Attachment C), then click on "Electronic Bidding Training Materials Website" (Attachment D), then continue to click on "How to complete an Electronic Bid File" (Attachment E). This opens Caltrans' bidding guide. On page 10 of this guide(Attachment F), it clearly states "Bid item numbers, and percentages may be completed as well. They can also be printed and submitted within 24 hours after bid opening." In the same manner from Attachment D, Bidding Forms section, click on "Subcontractor List". This brings up Form DES-OE-0102.2B(REV 5/2014) (Attachment G), which also clearly states "The bidder must submit within 24 hours of the bid opening, the bid item numbers with percentages of the portion of work subcontracted".

There is clearly a conflict with the instructions on how to properly submit an electronic bid. MBI should not be penalized for following the instructions that are spelled out in the Notice of Bidders and that are currently on the Caltrans website.

MBI submitted the required Subcontractor List information in accordance with the instructions in the Notice to Bidders and the Electronic Bidding Guide. As apparent low-bidder for this contract, Midstate Barrier's Bid should be declared responsive, and Midstate Barrier should be awarded this Contract.

Sincerely,



Clark D. Ebinger
President - MBI

DEPARTMENT OF TRANSPORTATION
 DIVISION OF ENGINEERING SERVICES
 OFFICE ENGINEER
 1727 30th STREET, MS-43
 P.O. BOX 168041
 SACRAMENTO, CA 95816-8041
 PHONE (916) 227-6299
 FAX (916) 227-6282
 TTY 711
 www.dot.ca.gov



*Serious drought.
 Help save water!*

" Attachment A "

June 9, 2015

Facsimile: (209) 944-9569

Clark D. Ebinger, President
 Midstate Barrier, Inc.
 P.O. Box 30550
 Stockton, CA 95213-0550

10-0X5404
 10-SJ-5-41.7/45.9
 B.O. 4/21/2015

Dear Mr. Ebinger:

The Department of Transportation (Caltrans) received a letter dated May 12, 2015, from Midstate Barrier, Inc. (MBI), protesting the decision by Caltrans that its bid is non-responsive because MBI did not submit the percentage of each bid item subcontracted with its bid. When submitted, MBI received an error message stating that the bid contained missing information related to the Subcontractor Listing. This same error was received on a previously submitted bid (03-4M6704), in which that contract was awarded one month prior to this bid opening. MBI utilized Form DES-OE-0102.2B (5/2014) in preparation of both bids. The form specifically instructs "The Bidder must submit within 24 hours of the bid opening, the bid item numbers with the percentages of the portion of work subcontracted." MBI submitted the required information on April 21, 2015 at 2:59 pm. MBI requests that Caltrans reconsider the decision and award contract 10-0X4504 to MBI.

With respect to contract 03-4M6704, Caltrans did not make a conscious decision to waive the discrepancy, rather the discrepancy was not discovered during the review of the bid and was not otherwise brought to the attention of Caltrans. While the discrepancy was not discovered in awarding 03-4M6704, such action does not dictate determinations with regard to future projects.

As this response relates to contract 10-0X5404; the use of the hard copy Subcontractor List Form DES-OE-0102.2B (5/2014) is not applicable. Bidders are required to follow the bidding instructions and to review the Notice to Bidders and Special Provisions of the Contract, which are made available to all persons who wish to bid on a project. Below for your reference, are the bidding instructions for submitting the Subcontractors List form;

- ✓ Enter bid item number. (Item)
- ✓ Enter percent of Bid Item subcontracted. (%)
- ✓ If the percentage of the bid item work is less than 100 percent list the description of the portion of work to be subcontracted.
- ✓ Enter the description of the percentage of work to be performed by subcontractor. (Description)

Mr. C. Ebinger
June 9, 2015
Page 2

Additionally, in the Notice to Bidders and Special Provisions of the Contract, the table below displays the 2010 Revised Contract Standard Specification Section and the Submittal deadline for submitting the Subcontractor List form.

2-1.33D (2) (b) Contracts with a DBE Goal

Section 2-1.33D (2) (b) applies if a DBE goal is shown on the Notice to Bidders,

Submit the bid forms according to the schedule shown in the following table:

Bid Form Submittal Schedule for a
Federal-Aid Contract with a DBE Goal

F	Submittal deadline
Bid to the Department of Transportation	Time of bid except for the public works contractor registration number
Copy of the Bid to the Department of Transportation as submitted at the time of bid with the public works contractor registration	10 days after bid opening
Subcontractor List	Time of bid except for the public works contractor registration number
Copy of the Subcontractor List as submitted at the time of bid with the public works contractor registration number	10 days after bid opening
Small Business Status	Time of bid
Opt Out of Payment Adjustments for Price Index Fluctuations ^a	Time of bid
DBE Commitment	No later than 4 p.m. on the 4th business day after bid opening
DBE Good Faith Efforts Documentation	No later than 4 p.m. on the 4th business day after bid opening

^aSubmit only if you choose the option.

Caltrans has not changed its position regarding the nonresponsive finding of the bid and will proceed to award the contract to the lowest responsible bidder provided all requirements are met.

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Chief, at (916) 227-6228.

Sincerely,



for

JOHN C. McMILLAN
Deputy Division Chief
Office Engineer
Division of Engineering Services

" Attachment B "

NOTICE TO BIDDERS

Bids open Tuesday, April 21, 2015

Dated March 30, 2015

General work description: Construct median barrier.

The Department will receive sealed bids for CONSTRUCTION ON STATE HIGHWAY IN SAN JOAQUIN COUNTY NEAR THORNTON FROM TURNER ROAD UNDERCROSSING TO BEAVER SLOUGH BRIDGE.

District-County-Route-Post Mile: 10-SJ-5-41.7/45.9

Contract No. 10-0X5404

The Contractor must have either a Class A license or one of the following Class C licenses: C-13, C-32.

The DBE Contract goal is 16 percent.

Federal-aid project no.:

ACHSIMG-005-6(343)487E

Bids must be on a unit price basis.

Complete the work within 80 working days.

The estimated cost of the project is \$1,920,000.

No prebid meeting is scheduled for this project.

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 Bidders' Exchange web site.

The Department will open and publicly read the bids at 1727 30th Street, Bidders' Exchange, MS 26, Sacramento, CA 95816 immediately after the specified closing time.

District office addresses are provided in the *Standard Specifications*.

Present bidders' inquiries to the Department and view the Department's responses at:

http://www.dot.ca.gov/hq/esc/oe/inquiry/bid_inquiries.php

Questions about alleged patent ambiguity of the plans, specifications, or estimate must be asked before bid opening. After bid opening, the Department does not consider these questions.as.bid.protests.....

Submit your bid with bidder's security equal to at least 10 percent of the bid.

Prevailing wages are required on this Contract. The Director of the California Department of Industrial Relations determines the general prevailing wage rates. Obtain the wage rates at the DIR Web site, <http://www.dir.ca.gov>, or from the Department's Labor Compliance Office of the district in which the work is located.

The federal minimum wage rates for this Contract as determined by the United States Secretary of Labor are available at <http://www.dot.ca.gov/hq/esc/oe/federal-wages>.

" Attachment 'C' "

http://www.dot.ca.gov/hq/esc/oa/contractor.html

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CA.GOV California Department of Transportation

Contract Awards & Services | Construction Contract Standards | Contractor's Corner | Guidance

Home -> Contractor's Corner

Contractor's Corner

GENERAL INFORMATION	ADVERTISEMENT	BIDDING	AWARDS	COST DATA
Doing Business with Caltrans	12 Month Advertising Schedule	Listen live to bid openings via phone, and Electronic Bidding webcast	Award Requirements	Cost Data
Caltrans Contractor Interest Registry	Advised Projects	Calendar of Upcoming Bid Openings	Retial of Bid Request Form	Contract Cost Data Book
Construction Contract Standards	Search contracts by Item	Electronic Bidding	Contract Award Status	Crude Oil Price Index
Business Enterprise Programs (DBE, DVBE, SBE)	Plans Holders List and Opt-in Search	Caltrans Bidding Connect	Awarded Contracts	Equipment Rental Rates and Labor Surcharge
Contracts Under \$281,000 (Minor B)	Bidders Inquiries	Authorized Materials List	Award Tracker	Highway Construction Cost Index
Architectural & Engineering Contract Information	Addendum Information	Buy America	Bidder Activity Report	Historical Highway Construction Price Index Reports
Caltrans Partnering Program	Post-bid files	Subcontracting Fair Practices Act	Searchable Past Bid Results	
Construction Payment Info (stop notices)	Current and Past Advertised Projects	Insurance Requirements		
Design-Build Program	Project Bucket	Request to withdraw bid proposal form		
Title VI Program Info		Preliminary & Bid Summary Results		

7:11 AM 5/02/2015

JUN-10-2015 WED 10:04 AM MIDSTATE BARRIER, INC. Received

Jun 10 2015 09:52am FAX: 12099449569

P. 006

" Attachment D " Bottom Half

- DO NOT CHANGE THE FILE NAME OF THE EBS, OR EBS AMENDMENT FILES! The EBS file should have a file name of Contract EBS, and the EBS Amendment file should have a file name of Contract EBS.001, depending on which addend it refers to
- Open the base EBS file, and a window will open indicating the changes applied by the addends. Save the EBS file before closing the Bid software
- Deleted directories can be found at the Caltrans Electronic Bidding Training Materials website at http://www.dot.ca.gov/hq/ese/bef/electronic_bidding/oe_trainingmaterials.html

Bid Express Help Desk

The Bid Express Help Desk can be reached at 1-888-352-2439

Electronic bidding training materials are available on the Electronic Bidding Training Materials Website

F.A.Q.'s Have a question about electronic bidding? It may have already been answered at the Electronic Bidding F.A.Q. page.

Electronic Bid Bands

Electronic bid bands can now be submitted with your electronic bid. For more information, have your surety agent contact either SurePath or Surety 2000 for more information.

Energy Crisis Information

It is possible that a power outage may occur during a Bid Opening. The following is a brief description of how the Bid Opening will be conducted in the event of a power outage. Please allow an appropriate amount of time for power related delays when submitting your bids. In the event of a power outage prior to Bid Opening (12:30 PM or later):

- Bids will be accepted until the specified bid opening date and time
- No additional time will be allowed for submitting Bids
- The public reading of the bids will be postponed until 4:00 PM on the date of bid opening
- If power has not been restored by 4:00 PM on the date of Bid Opening, the Department will reschedule the opening of bids for the following day
- Bid results will be made available on the Office Engineer website, as soon as possible, after power has been restored.

In the event of a power outage during a Bid Opening:

- The last project downloaded will be read, by flashlight if necessary
- The public will be escorted out of the building by Building Security
- Any projects remaining to be downloaded, will not be downloaded until power is restored
- Bid opening will resume at 4:00 PM, if power has been restored
- If power has not been restored by 4:00 PM on the date of Bid Opening, the Department will reschedule the opening of bids for the following day

Electronic Bidding update

Caltrans has chosen the American Association of State and Highway Transportation Officials' Transport Expedite Bid software as its electronic bidding solution. Expedite is integrated with Info Tech's Bid Express Internet Bidding Service (IBIS) for the submission of electronic bids through the Internet.

More information regarding Expedite Bid can be found at the Expedite product website at <https://www.infotech.com/>. More information on regarding IBIS can be found at the IBIS website at <https://www.bid.com> For questions regarding electronic bidding, contact the Caltrans Contract Awards Unit at (916)277-5229.

Bidding forms

Bidder's Bond Form

Subcontractor List

Certified DVBE Summary form

Caltrans Bidder DBE Commitment - form for bidding are available with the contract documents on the advertised project site in Forms for Bid

Certified Small Business Using for the Non-Small Business Preference form

Good Faith Efforts Documentation - form for bidding are available with the contract documents on the advertised project site in Forms for Bid

← Clicked



Received JUN-10-2015 WED 10:04 AM MIDSTATE BARRIER INC.

Jun 10 2015 09:53am FAX: 12099449569

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" Attachment E "

http://www.dct.ca.gov/hq/ess/oe/electronic_bidding/oe_training_m... Caltrans - Office Engineer - X

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CA.GOV California Department of Transportation **Office Engineer**

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Contract Awards & Services | Construction Contract Standards | Contractor's Corner | Guidance

Home -> Contract Awards and Services -> Electronic Bidding Training Materials

Electronic Bidding Training Materials

Caltrans electronic bidding materials

Incorporating Electronic Bidding addenda

How to complete an electronic bid file ← *clicked*

June 2014 Electronic Bidding Presentation

Bidx electronic bidding materials

Bidx training materials are available on the Bidx.com Training Center website

Bidx.com/site/trainingcenter

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7:10 AM 6/10/2015

JUN-10-2015 WED 10:04 AM MIDSTATE BARRIER INC. Received

JUN 10 2015 09:53am FAX: 12099449569

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" Attachment G "

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
DES-OE-0102.2B (REV 5/2014)

Bidding Firm: _____

Under Public Contract Code § 4100 et seq., the Bidder must set forth in the bid the name, the location of the place of business, the California contractor license number, and the portion of work of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.

The Bidder must submit within 24 hours of the bid opening, the bid item numbers with percentages of the portion of work subcontracted.

Business Name and Location	California Contractor License Number ^(a)	Description of Portion of Work	Bid Items Numbers	Percentage of Bid Item Subcontracted

^a Not required on contracts with Federal-Aid.

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-88, Sacramento, CA 95814.

MIDSTATE BARRIER, INC.

P.O. Box 30550
Stockton, CA 95213-0550
Office- 209-944-9565 Fax- 209-944-9569
License No. 529261

FAX COVER SHEET

Send To: Caltrans Office Engineer From: Clark D. Ebinger

Office # 209-944-9565 X-501

Attn: John McMillan Fax # 209-944-9569

Fax: (916) 227-6282 Pages: 11

Phone: (916) 227-6299 Date: 06/10/15

Re: Contract 10-0X5404

Thank You,

Clark D. Ebinger