

**COFFMAN SPECIALTIES, INC.**
GENERAL AND ENGINEERING CONTRACTORS

June 24, 2015

Sent via facsimile: (916) 227-6282 and
e-mail: John.McMillan@dot.ca.govJohn C. McMillan, Deputy Division Chief
Office Engineer
California Dept. of Transportation
P.O. Box 168041, MS-43
Sacramento, CA 95816-8041Re: Contract 11-288814; Rte. 11/125/905 Separation; Fed'l Aid Project ACCBI-Xo73(111)N
Responsiveness of Coffman Specialties, Inc.'s Bid

Dear Mr. McMillan,

This letter was prompted by a telephone call from the Department of Transportation ("Caltrans") Office Engineer informing Coffman Specialties, Inc. (Coffman) concerning Coffman's subcontractor percentages information (for the listed Subcontractors) that was timely submitted within 24 hours after bid opening for Contract 11-288814 (the "Contract"). The Office Engineer's representative said the percentages were due at bid opening. Yet, in a subsequent telephone conversation, Kathy of Caltrans' Office Engineer informed Coffman that no determination of nonresponsive was made, and none would be without a letter informing Coffman of such a determination. To date, Caltrans has not made such a determination. Coffman respectfully submits this letter to confirm Coffman's bid was responsive, because the bid documents allowed submission of percentages up to 24 hours after bid opening.

The lowest bid (submitted by Flatiron West) contained errors and omissions—as pointed out in Flatiron's letter to the State and expounded upon in Coffman's letter submitted under separate cover—thus, Coffman was the lowest responsive bidder.

Public Contract Code § 4104 of the Subletting and Subcontracting Fair Practices Act (§ 4100, et seq.) requires listing subcontractors whose work exceeds one-half of 1 percent of the prime contractor's total bid (or \$10,000, whichever is greater). Inclusion in bids of the percentages of Bid Item work to be performed by the listed subcontractors is not statutorily mandated, but Caltrans requests it. For the past several years, the State has permitted bidders to submit percentages of subcontracted work any time from bid-opening up to 24 hours thereafter. Such was the case—or appeared to be the case—on the bid for this Contract.

Nowhere do the bid documents for Contract 11-288814 expressly instruct bidders to submit subcontractors' percentages at the time of bid opening; nor do they inform bidders that failure to submit percentages at bid opening will result in a nonresponsive bid. No mention is made of the change from allowing submission of percentages 24 hours after bid opening to requiring them at bid opening. In fact, the opposite is true. The documents tell bidders to submit Subcontractor Lists at the time of bid, as they have always done, and they specifically direct bidders (more than once) to Caltrans' Bidders' Exchange website and Electronic Bidding Guide.



John C. McMillan, Deputy Division Chief
California Dept. of Transportation
June 24, 2015
Page 2 of 3

The Notice to Bidders in the bid documents says:

"For more information refer to the Electronic Bidding Guide at the Bidders' Exchange web site." (*Notice to Bidders and Special Provisions*, pg. 1.)

The face of the Notice to Bidders and Special Provisions designates this Contract an "Electronic Bidding Contract." Revised Standard Specification § 2-1.33B "Electronic Bids" (applicable to this Contract) directs bidders as follows:

"For an electronic bid, complete and submit and submit the electronic portion of the Bid book **under the Electronic Bidding Guide at the Bidders' Exchange website** and submit the paper forms as specified for a paper bid." (Emphasis added.)

A page on the Bidders' Exchange website entitled "Electronic Bidding Training Materials" (see Attachment 1 hereto) includes a topic called "*How to complete an electronic bid file*" that, when clicked, leads one to a Power Point manual of the same title. (See Attachment 2 hereto.)

The Electronic Bidding Guide called "*How to complete an electronic bid file*" (that is specified in the bid documents and referenced by Caltrans' Office Engineer's manual and website) says very plainly:

"Bid item numbers, and percentages may be completed as well. They can also be printed and submitted within 24 hours after bid opening." (See Attachment 2 hereto at pg. entitled "Subcontractor List Folder".)

Another link to "*How to complete an electronic bid file*" exists on Caltrans' website entitled "Frequently Asked Questions about Electronic Bidding [in a question and answer vignette, the query is "Is there a guide for electronic bidding?" and the answer is "Training materials, including an electronic bidding guide are available at Caltrans Office Engineer Electronic Bidding website here." ("Here" links the bidder to the Power Point manual.) (See Attachment 3 hereto.)

Caltrans' Bidder's Exchange web page (see Attachment 4) includes a link to "**New! Electronic Bidding**" that leads to a page containing another link called "*oe trainingmaterials* (last modified 29-Apr-2015" (see Attachment 4, second page) which, when clicked, leads to the "*How to complete an electronic bid file*" manual that expressly allows submission of subcontractor percentages up to 24 hours after bid opening.

Yet another webpage (http://www.dot.ca.gov/hq/esc/oe/electronic_bidding/electronic_bidding.html) called "Electronic Bidding" (Attachment 5) contains a link under the heading "Electronic bidding addenda" to "Electronic Bidding Training Materials" and "*How to complete an electronic bid file*." The page also links to the information under the heading "Electronic Bidding Training Materials Website," and the heading "Electronic Bidding F.A.Q. page," and the heading "Subcontractor List" that leads to the Subcontractor List form which expressly says "The Bidder must submit within 24 hours of the bid opening, the bid item numbers with percentages of the portion of work subcontracted." (See Attachment 5, third page.)

John C. McMillan, Deputy Division Chief
California Dept. of Transportation
June 24, 2015
Page 3 of 3

More links to the permissive 24 hour submittal language exist in Caltrans' web pages, guidelines, and bidder information but are not mentioned here. All of the websites discussed existed at the time of the bid.

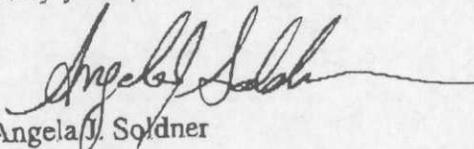
The Bid Documents not only lacked any affirmative statement that subcontractors' work percentages in the Subcontractor List must be submitted at bid opening, more importantly, the Bid Documents, by incorporating the websites and online manuals, affirmatively allowed for submission of percentages any time after bid opening up to 24 hours later. Coffman timely submitted its subcontractors' percentages for the Subcontractor List within 24 hours after bid opening. Caltrans therefore is obligated to accept and consider said percentages as a responsive part of Coffman's bid.

Caltrans' representative told Coffman that the bid called for submission of subcontractors' work percentages at bid opening. Coffman does not read that in the Bid Documents. Instead, they quite clearly allowed for submission of percentages after bid-opening. However, if Caltrans' stated position has any validity, then at best, the documents are "ambiguous"; and any ambiguity in the Bid Documents must be construed against the public agency who created the ambiguity, *not* against the contractors who thought the terms were clear in allowing 24 hour submittals. (See Civil Code § 1654 [contract construed against party causing the uncertainty]; and *Weeshoff Constr. Co. v. Los Angeles County Flood Control Dist.* (1979) 88 Cal.App.3d 579, 587-588 [written contract is construed against the drafter].)

Caltrans is required to administer the competitive bidding process in a fair and equitable fashion in strict accordance with Part 2 of the Public Contract Code and Chapter 1 of Title 23 of the United States Code (for federal aid projects such as this one), and must award contracts to the lowest responsible bidder. (Pub. Cont. Code § 10180) And it is well-established that where public contracts are required to be let through competitive bidding, the proposals and specifications inviting such bids must be sufficiently detailed, definite and precise so as to provide a basis for full and fair competitive bidding upon a common standard and must be free of any restrictions tending to stifle competition. (See *Baldwin-Lima-Hamilton Corp. v. Superior Court In & For City & Cnty. of San Francisco*, 208 Cal. App. 2d 803, 821 (Ct. App. 1962).) Caltrans' invitations for bids must meet the specificity standard.

The only proper interpretation of the Bid Instructions is to permit submission of percentages 24 hours after bid opening. We trust Caltrans is in agreement.

Truly yours,



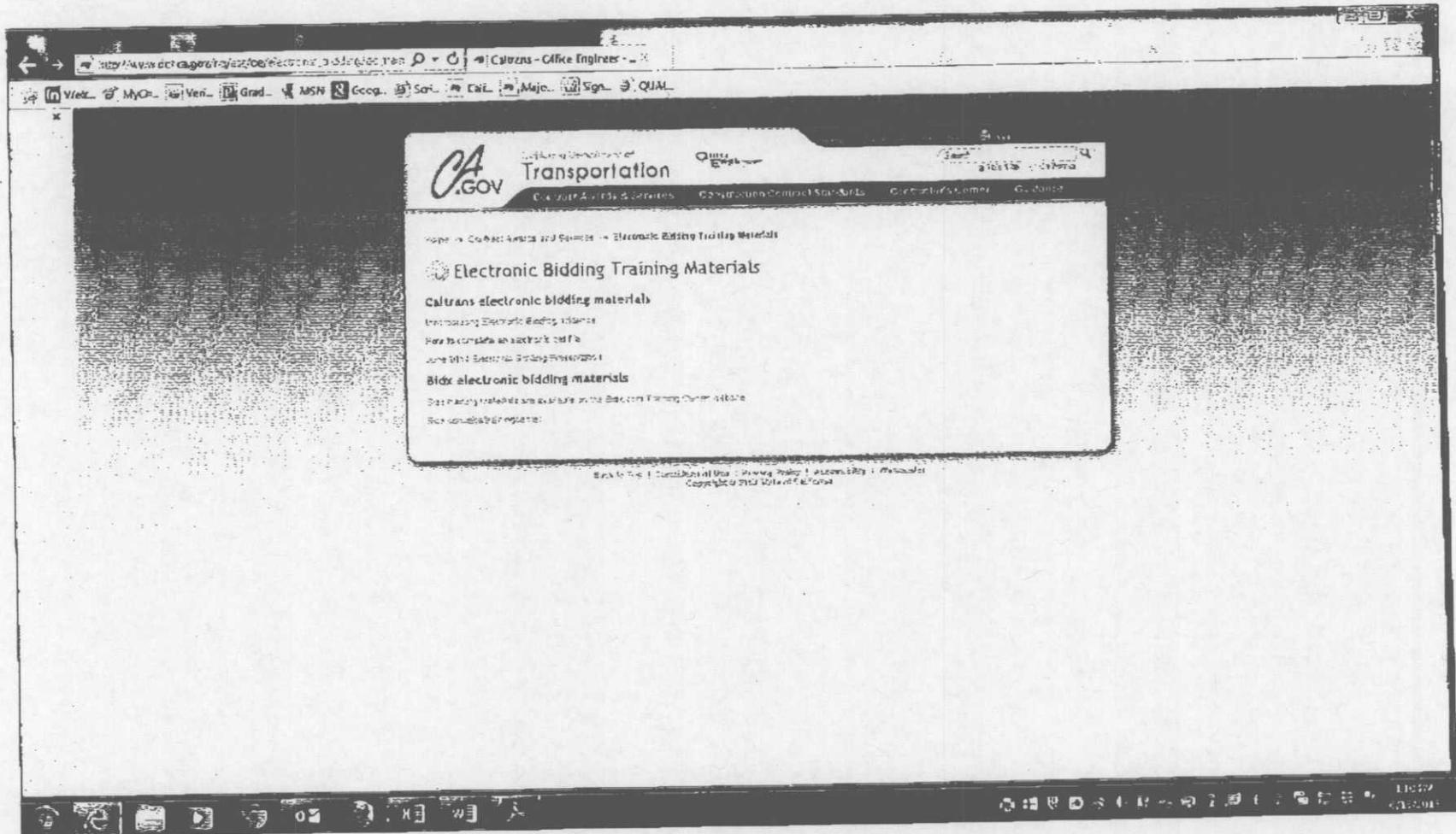
Angela J. Soldner

Encls.

ATTACHMENT 1

Caltrans' Electronic Bidding Training Materials

- This page copied from Caltrans' website and printed on 6/15/2015
- This page contains the link to "How to complete an electronic bid file" which tells bidders that percentages may be completed, and "They also can be printed and submitted within 24 hours after bid opening."



ATTACHMENT 2

How to complete an electronic bid file

11/7/2014

ATTACHMENT 3

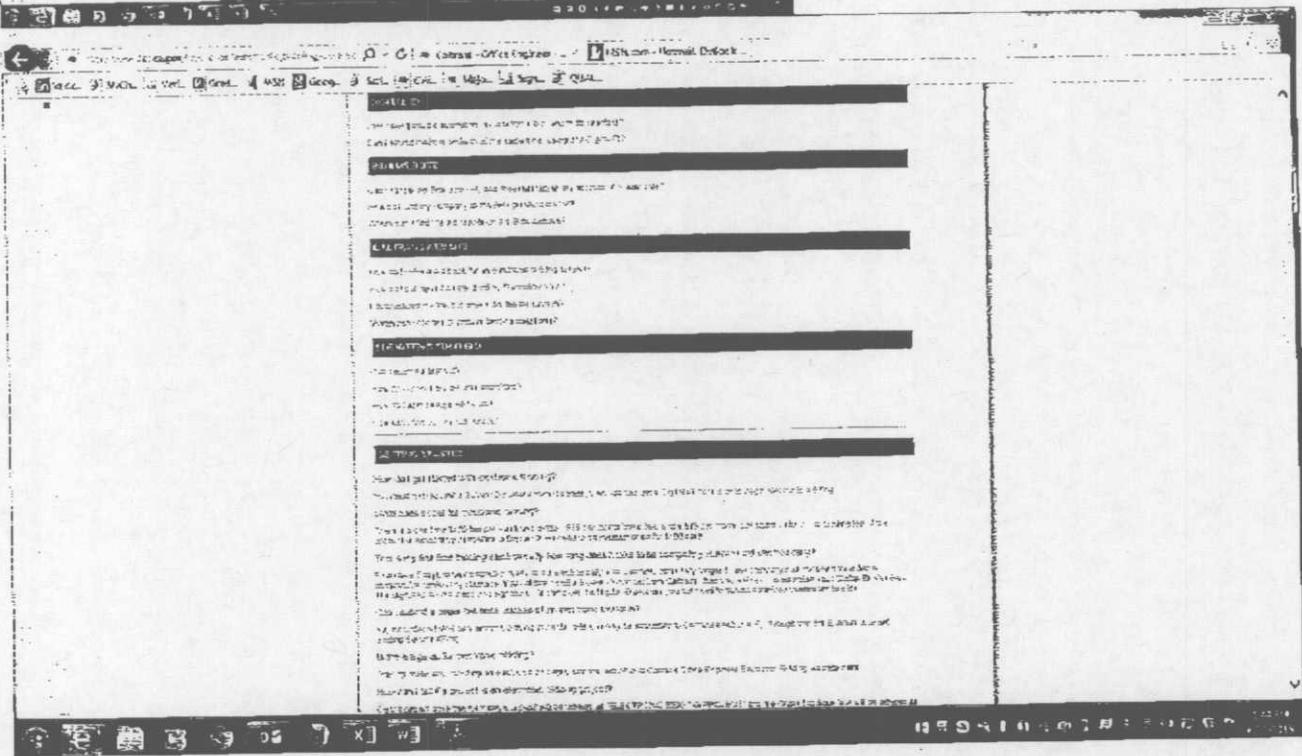
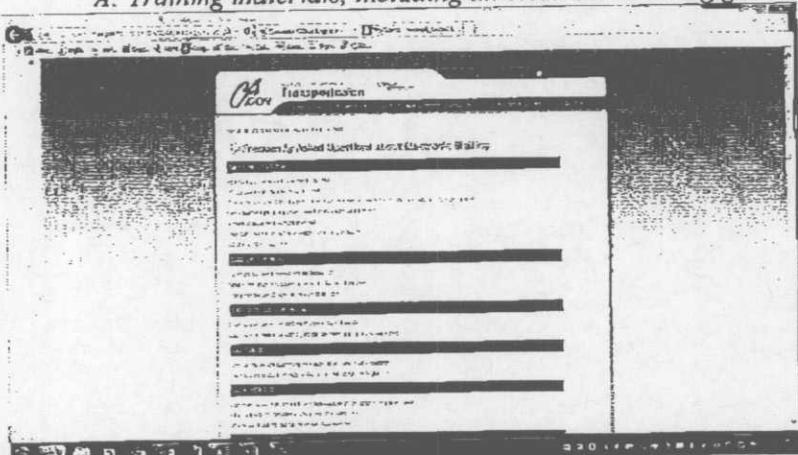
Caltrans Website – Frequently Asked Questions about Electronic Bidding

-printed 6/15/2015

-Directs bidders to Electronic Bidding website for instructions

Q: Is there a guide for electronic bidding?

A: Training materials, including an electronic bidding guide are available at Caltrans Office Engineer Electronic Bidding website [here](#)



06/24/2015 16:05

Received
8585363131

Jun 24 2015 05:15pm
COFFMAN SPECIALTIES

PAGE 11/18

06/24/2015 16:05

Received
8585363131

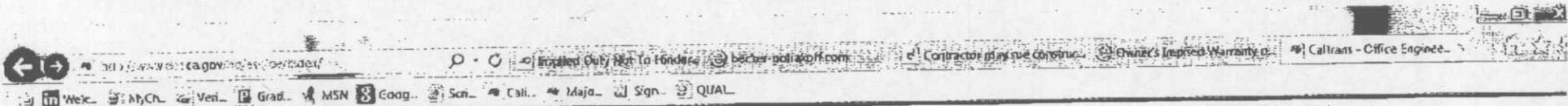
Jun 24 2015 05:15pm
COFFMAN SPECIALTIES

PAGE 12/18

ATTACHMENT 4

Caltrans' Bidder's Exchange Web Page

- Printed 6/24/2015
- Contains Link (under "Bidding" heading on left side of page) to "New! Electronic Bidding"
- Link leads to "Training Materials" which is the page entitled "Electronic Bidding Training Materials" that leads bidders to the Power Point manual entitled "How to complete an electronic bid file."
- "How to complete an electronic bid file" allows bidders to submit subcontractor work percentages up to 24 hours after bid opening.



Home | Travel | Business | Engineering | News | Maps | Jobs | About Caltrans | Contact Us
 Home | Engineering | Maps | Jobs | News | Business | Travel | About Caltrans | Contact Us

- Home
- Travel
- Business
- Engineering
- News
- Maps
- Jobs
- About Caltrans
- Contact Us
- Home
- Engineering
- Maps
- Jobs
- News
- Business
- Travel
- About Caltrans
- Contact Us

Caltrans > Engineering > Office Engineer > Bidder's Exchange

Bidder's Exchange

The Bidder's Exchange page is a guide to all the bidding resources Caltrans provides online.

Electronic Bidding

Please refer to this guide to help you through our new electronic bidding process.

Finding work to bid

Caltrans **availability** is a complete listing of everything we currently have out for bid, as well as a list of immediately upcoming projects for bid. Simplified listings at the top of the page put all advertised projects into one group, as well as all upcoming projects into another. "Attachments" a bit further down the page are the traditional things we have used for advertising in the past. Attachment A is a good place to look if you only want to see projects that are new to our advertising listing as of the current week. All ads are refreshed weekly at 3am on Monday mornings. Tuesday is Monday happens to be a holiday. Listings for individual projects will allow bidders to see details of each project, and info are provided for those who want to see the contract documents, order a bid book, place a prime ad or opt-in on the contract, or see planholder list. Planholder lists are composed of those who have ordered a bid book and are updated immediately when a bidder places their order online.

Bid item search

The bid item search is a long-requested feature that helps bidders find projects that they want to bid by the searching for the bid items in those contracts. Partial bid item descriptions can be used to find projects.

Map of advertised projects

A map showing all advertised and upcoming projects was created to help bidders find projects by their geographical location. Projects that are currently advertised will be shown by a red marker, and projects that are upcoming will be shown in blue. Clicking on a marker will bring up a toolbar of expanded information, and a link for those wishing to participate on the contract or look at the contract documents.

Bidder Inquiries

If you have a question on the buildability of a project that isn't covered in the plans or specifications, our bidder inquiries are the right place to find your answer. Go to the inquiry site for the district you're bidding in, and submit your question. Or view previously submitted questions and answers. We want all bidders to bid with confidence, so if something is unclear, make sure you ask.

Planholder Search

Our planholder search is an up-to-the-minute view of who is bidding all our currently advertised projects. Note that all are using our electronic advertising system, bidding planholders are defined as those who enter a bid book from us. You can also use this system to search for opt-in participants, defined as those who wish to subcontract or supply materials to prime bidders. Options for searching by DBE or small business status are provided to help meet your contract goals.

Looking at bid results

Bid summaries

The bid summary page serves two functions. On the left side of the page, verified bid summaries are organized by bid opening date, then by contract. Clicking on a link will open the PDF bid summary for that contract, showing all bidders, their verified bids, subcontractor lists, and item prices for all bidders. On the right side, we list our non-verified preliminary bid opening results. These results will show up as verified bid summaries, after verification is completed.

Public bid files

All files submitted to Caltrans are now scanned and uploaded to be accessible via this page. Bid books, subcontractor submittals, good faith submittals, bid protests, and all other public record documents are scanned and uploaded for everyone to see and review. This was done as part of our effort to increase transparency, as well as assist bidders with their public record requests.

Awarded project search

Find out who has been awarded contracts in the past. Searches are available by district or All contract number, by bid opening or award date, by contractor name, or type of work. Results will display dates, contractors, bids, location, and type of work.

For more information



Public Notice

Electronic Bidding Update
 Caltrans is pleased to announce that implementation of electronic bidding on highway construction contracts has begun. Caltrans has chosen the American Association of State Highway and Transportation Officials' TMS'net 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 <http://www.expedite.com>. More information regarding Caltrans electronic bidding please contact Chris Rice, at (916)227-4235 or Chris.Rice@dot.ca.gov.

Electronic Bidding Guide available [here](#).
 DBBE Requirements The Department of Transportation has

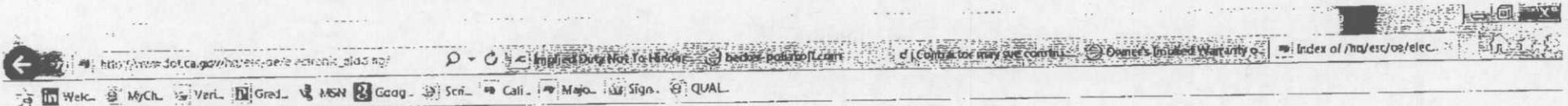
06/24/2015 16:05
 Received
 8585363131

COFFMAN SPECIALTIES
 Jun 24 2015 05:15pm

PAGE 13/18

Caltrans Electronic Bidding Index Web Page

- Contains Link to Training Materials for Electronic Bidding



Index of /hq/esc/oe/electronic_bidding

Name	Last modified	Size	Description
Parent Directory			
doc	22-Jan-2015 11:14	-	
electronic_bidding.html	29-Apr-2015 15:17	14K	
electronic_bidding.rtf	25-Feb-2015 11:06	5.0K	
oe_elec_bidding_faqs.php	17-Jul-2013 09:38	6.1K	
oe_trainingmaterials.rtf	29-Apr-2015 11:33	5.8K	

06/24/2015 16:05

Received
8585363131

Jun 24 2015 05:16pm
COFFMAN SPECIALTIES



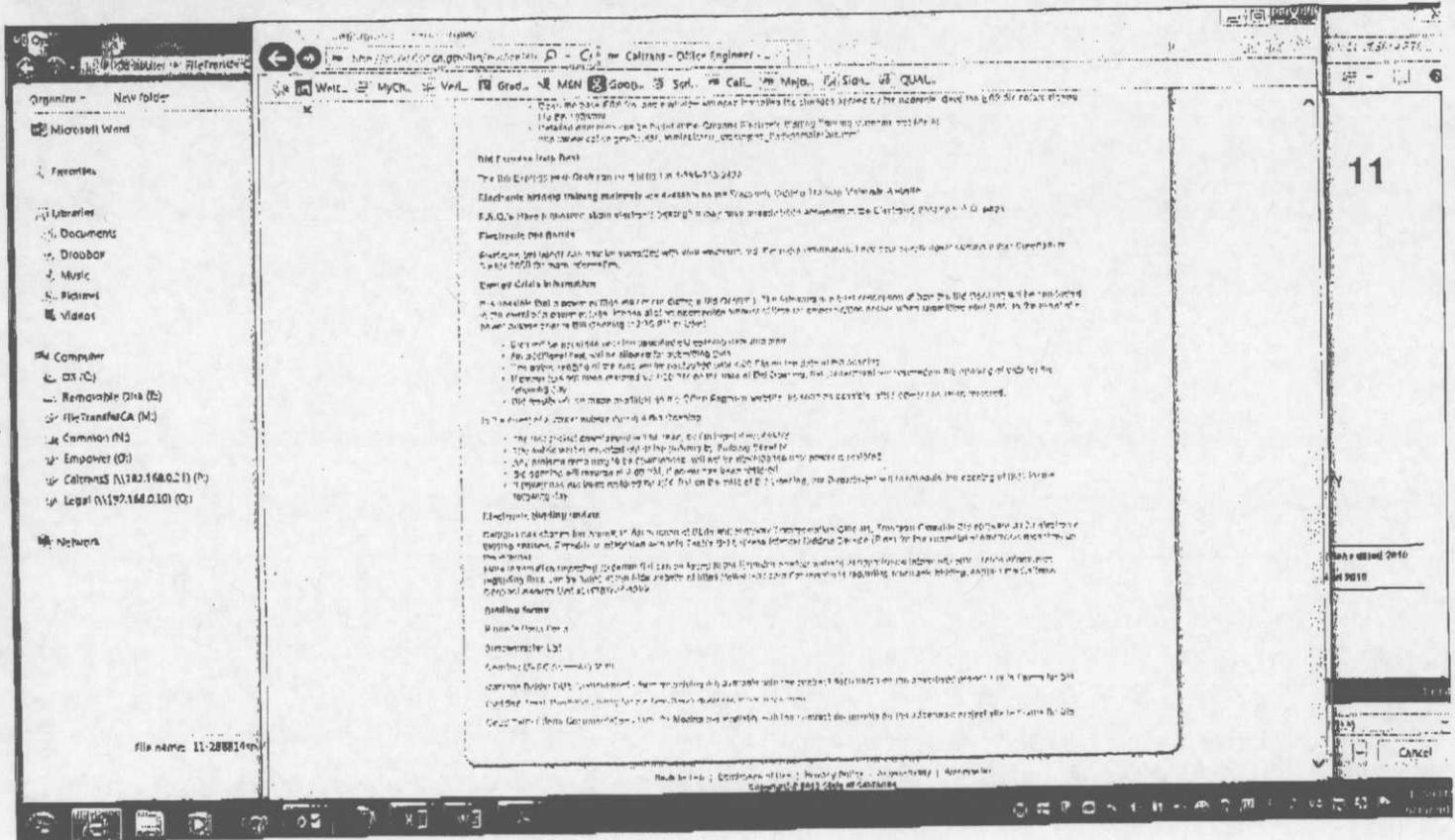
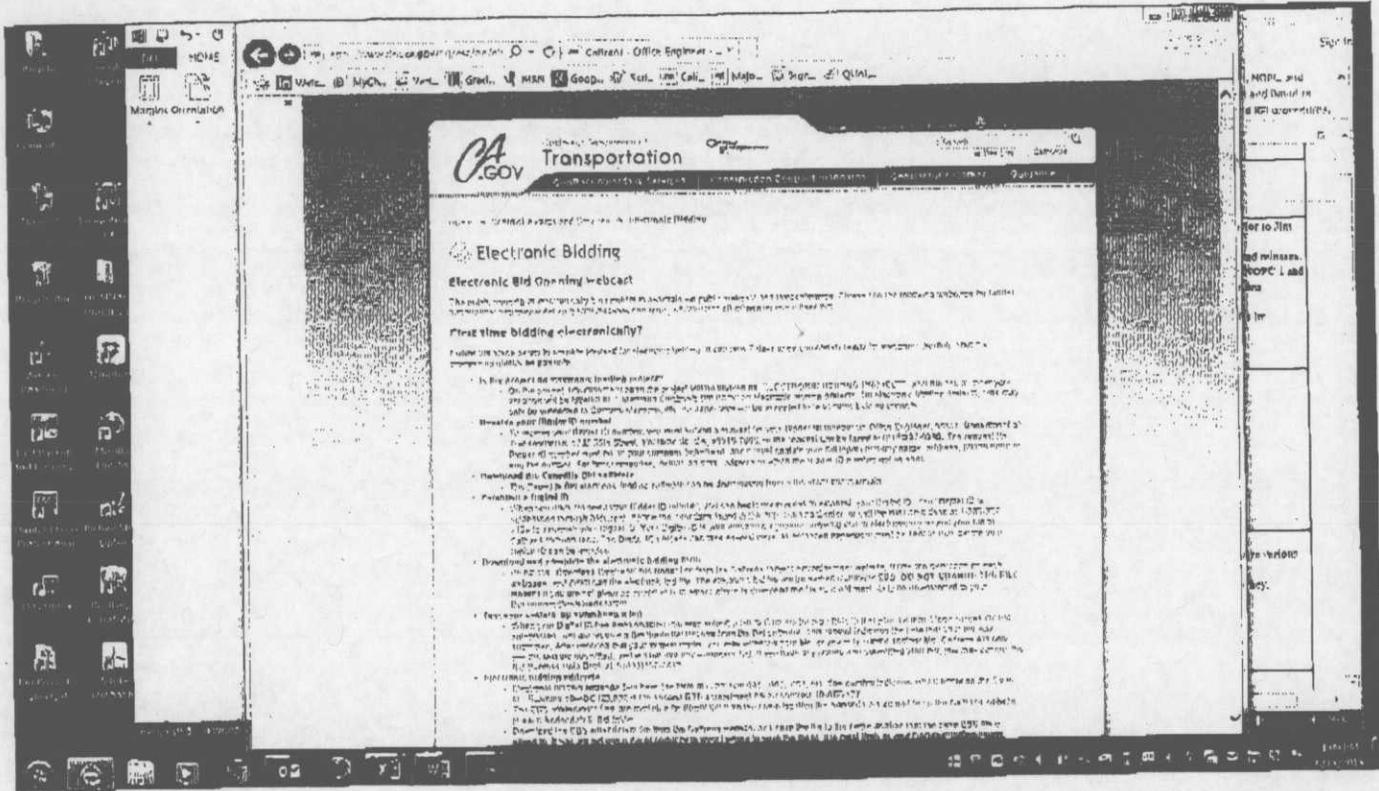
PAGE 14/18

ATTACHMENT 5

Caltrans' Electronic Bidding Website

- Printed 6/15/2015

- Contains link to Subcontractor List form, allowing submission of subcontractor percentages within 24 hours after bid opening.



Electronic Bid Opening webcast

The public opening of electronically submitted bids is available via public webcast and teleconference. Please see the following webpage for further information and view the e-bidding website: [http://www.ctd.ca.gov/.../ElectronicBidOpening.htm](#)

First time bidding electronically?

Follow the steps below to create your user for electronic bidding. It can take 7 days to be completely ready for electronic bidding, start the process as quickly as possible:

- Is this project an electronic bidding project?**
 - On the project bid advertisement page, the project will be labeled as "ELECTRONIC BIDDING PROJECT" and the web page will have you click on "Electronic Bidding Bid Book" or "Electronic Bidding Project". An electronic bidding project, however, only be eligible to submit electronically if your bid will be received for electronic bidding.
- Receive your Bidder ID number**
 - To receive your Bidder ID number, you must submit a request for your Bidder ID number to: Office Engineer, USAI, Department of Transportation, 1725 26th Street, Sacramento, CA 95834-7000, or the request can be faxed to (916) 227-4500. The request for Bidder ID number must be on your company letterhead and must contain your full legal company name, address, phone number and fax number. Fax your response, include an email address to which the Bidder ID number will be sent.
- Download the Expedite Bid software**
 - The Expedite Bid software bidding software can be downloaded from [http://www.ctd.ca.gov/...](#)
- Establish a Digital ID**
 - When you have received your Bidder ID number, you can begin the process to establish your Digital ID. Your Digital ID is established through BidView. Follow the directions found in the BidView Training Manual, or call the BidView Help at 1-888-353-2429 to establish your Digital ID. Your Caltrans BidView account agreement, account ID and activation code will be sent to you via email through BidView. The Digital ID process can vary by jurisdiction. An electronic signature must be sent to your Bidder ID number via email.
- Download and complete the electronic bidding form**
 - Download, Complete, Electronically Sign and Upload the Caltrans Project Advertisement website, follow the directions on each website, and download the electronic bid file. The file name will be named COMPANY EBS. **DO NOT CHANGE THE FILE NAME!** The file name will be used to identify the bid file. To download the file, click on "Download" in your "Documents/Downloads" folder.
- Test your system, by submitting a bid**
 - When your Digital ID has been established, you may submit a bid to Caltrans through BidView. Test your system using a successful bid submission. You will receive an Bid Submission Receipt from the BidView site. This receipt will include the BidView account ID and user information. Also, submitting your bid to a system where you may already have a bid, or you may have a contract for Caltrans, will only show the bid submitted and will not affect any other bid. If you have any questions about submitting your bid, you may contact the BidView Help Desk at (916) 227-4500.
- Electronic Bidding addenda**
 - Electronic Bidding addenda files have the form of COMPANY EBS ADDENDUM. The number indicates which addendum file is for. Example: COMPANY EBS ADDENDUM 001. The addendum files are available for download from the same location as the Addenda are posted to on the Caltrans website in each Addendum's EBS folder.
 - Download the EBS addendum file then click on "Save as PDF" and save the file to the same location that the main EBS file is saved to, if you are not given the opportunity to save the file to a different location, you may need to download the addendum file.
 - DO NOT CHANGE THE FILE NAME OF THE EBS, OR EBS AMENDMENT FILES!** The EBS file should have the name of COMPANY EBS, and the EBS Amendment file should have the name of COMPANY EBS, depending on which Addendum Caltrans is Open the main EBS file and a amend addendum including the changes applied to the addendum. Save the EBS file before testing the bid software.
 - Additional questions can be found at the Caltrans Electronic Bidding Training Materials website at [http://www.ctd.ca.gov/.../Electronic_Bidding_Train_Materials.htm](#)

Bid Express Help Desk

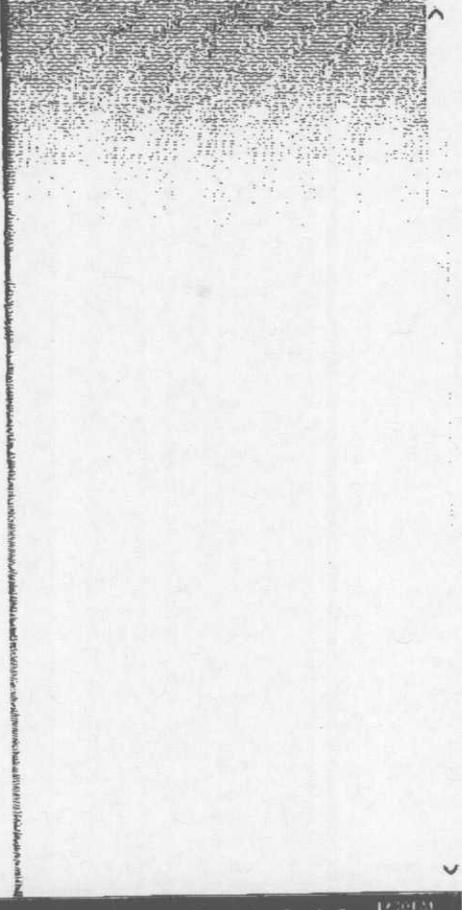
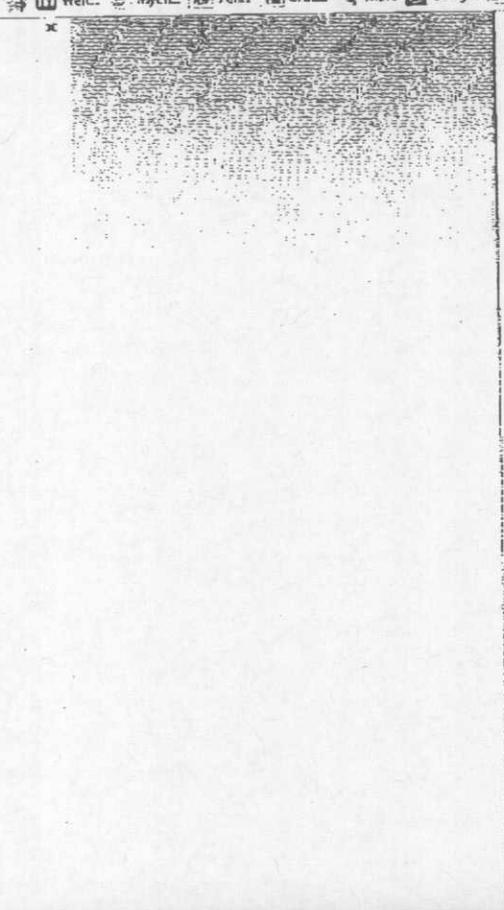
The Bid Express Help Desk can be reached at 1-888-353-2429

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 Books

Electronic bid books can now be submitted with your electronic bid. For more information, please visit [http://www.ctd.ca.gov/...](#)



06/24/2015 16:05 Received 8585363131 Jun 24 2015 05:16pm COFFMAN SPECIALTIES PAGE 17/18



FAX TRANSMISSION

DATE: June 24, 2015
PROJECT: Contract No. 11-288814; 11/125/905 Separation
SUBJECT: Coffman Letter

TRANSMIT THE FOLLOWING COPIES TO:

NAME: JOHN C. MCMILLAN, Deputy Division Chief
COMPANY: Caltrans Office Engineer
FAX NUMBER: (916) 227-6282

TOTAL NUMBER OF PAGES 18 INCLUDING TRANSMITTAL SHEET.

ORIGINAL TO FOLLOW VIA U.S. MAIL – NO. Sent via e-mail.

MESSAGE OR SPECIAL INSTRUCTIONS:

Please see the attached letter concerning the Bid instructions for the above-referenced Project.

IF TOTAL NUMBER OF PAGES ARE NOT RECEIVED, PLEASE CALL OUR OFFICE AT (858) 536-3100

SIGNED: Angela J. Soldner, Esq.

CC: _____

9685 Via Excelencia, Suite 200 San Diego, California 92126 (858) 536-3100 Fax No. (858) 536-3131



W
B
E