

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

December 24, 2014

California Department of Transportation  
Division of Engineering Services  
Office Engineer  
Deputy Division Chief

Re: 04-4A3424 / 04-Ala-24,580 Var / Bid date 10/28/2014

Attention: John C. McMillan

Dear Mr. McMillan:

Midstate Barrier, Inc. (MBI) has received your Notice of Award Rescission, dated December 22, 2014, for Contract #04-4A3424, bid opening October 28, 2014. Even though MBI disagrees with Caltrans' letter rescinding the award to us, it is not our intent to protest this decision. However, MBI would like to take this opportunity to state our position and point out some unique issues that Caltrans created in regards to bidding this project.

Initially, MBI disagreed with Caltrans' decision to advertise this project with the A+B provision. We made Caltrans aware of our position in a bidder's question early on in the bidding process. A copy of this question is attached. The actual field work can be completed within the 25 working days, as evidenced from the B portion of our bid. However, the contract does not specifically allow for any additional time after the award for the contractor to build the sign structures. This is contrary to many short term projects that bid and include items requiring substantial fabrication, or items to procure with longer than normal lead times such as specialized electrical equipment. Attached are details of a similar project in District 4 to refer to. Normally in these cases, Caltrans includes a provision in the contract that allows for time to fabricate or procure specialized and unique materials such as these. The contract may state that the first working day will start as many as 55 days after award. This benefits Caltrans and the bidding contractors in several ways. The bidders now can control their schedule and put a true estimate of the time they require to complete the project, so it becomes a more level playing field. Plus, the public is only exposed to the construction area for a shorter duration – not the added time to fabricate or procure materials. The way this job was set up, the contractor had to not only contemplate the amount of time it takes to build the structures, something contractors do have control over, but more importantly, contemplate the amount of time it takes Caltrans to approve shop drawings, something contractors do not control. This review can take up to thirty days for each revision, and in fact, by specification, this review process can last longer than the entire time it takes to build the structures and complete all field work on this project. On a short project such as this, the activity of reviewing plans should not have such a major impact to the job's critical path, since the contractor has no control over its duration.

MBI did expedite the drafting of sign structure shop drawings. In fact, Caltrans received these drawings two weeks ago. With their approval, we could have started building the structures and at the same time, perform the field work required in preparation of these structures. We could complete the project with no request for winter suspension with an expedited approval. However, to our knowledge, there hasn't been a Resident Engineer assigned to the project as of yet, and no one has started the review.

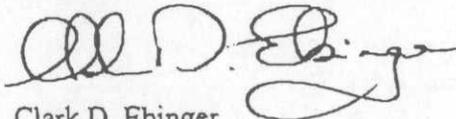
The second issue we'd like to point out is that we do not agree with Caltrans' conclusion that our bid is nonresponsive. In accordance with Standard Specification Section 2-1.30, Job Site and Document Examination, we reviewed the bid documents, the special provisions, the plans, the jobsite locations, and anticipated local conditions. Published bid requirements included the "cost + time" (A + B) basis of bid comparison and included a maximum of 150 working days bid. There was not a provision for a minimum days bid, as stated in the Notice of Award Rescission letter.

As a final point, MBI's bid fulfilled all necessary requirements. The "A" bid was based on unit pricing and extended the engineer's estimated quantities. The "B" bid indicated the number of working days which was less than the maximum of 150. All forms were completed and signed as specified. A notarized bid bond was included, along with forms showing our plan to achieve the DBE goal of 10%. The fact that our bid was originally accepted and the contract was sent indicates that MBI's bid package was complete and without errors.

Midstate Barrier, Inc. received the award of this contract on December 4, 2014. We completed and returned it within the required time. MBI issued subcontracts and purchase orders to our subs and suppliers, based upon this award. For over two weeks, we made preparations for this project, including expediting overhead-sign structure shop drawings for the engineer's review. In good faith, and with full anticipation of the contract's execution by a Caltrans-authorized representative, MBI has expended monies directly based upon this award. By rescinding it after issuance of contract documents, MBI feels that we have been misled. And now, there is no simple method of recouping any of the costs expended.

We certainly welcome any discussion or questions that Caltrans might have in regards to this issue. We would ask you to reconsider your decision and review the drawings you already have in house. MBI can still complete this project, as we bid it, with no winter suspension, and with some cooperation from Caltrans with the shop drawings. Thank you for your consideration.

Sincerely,



Clark D. Ebinger  
President - MBI

STATE OF CALIFORNIA - CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

**DEPARTMENT OF TRANSPORTATION**  
DIVISION OF ENGINEERING SERVICES  
OFFICE ENGINEER  
P.O. BOX 168041, MS-43  
SACRAMENTO, CA 95816-8041  
PHONE (916) 227-6299  
FAX (916) 227-6252  
TTY 711  
www.dot.ca.gov



*Serious drought.  
Help save water!*

December 22, 2014

Facsimile: (209) 944-9569

Clark Ebinger, President  
Midstate Barrier, Inc.  
Post Office Box 30550  
Stockton, CA 95213

04-4A3424  
04-Ala-24, 580-Var  
B.O. 10/28/14

**Notice of Award Rescission**

Dear Mr. Ebinger:

Bids were opened on October 28, 2014 to replace gore signs with overhead signs, in various locations in District 4, Alameda County, at routes 24 and 580 - at various locations.

This project was awarded to your company, Midstate Barrier, Inc. (Midstate) on December 3, 2014. This project has a minimum of 150 working days to complete. Midstate did not take into account the fabricating time required for the sign structures. Instead, Midstate assumed the project would enter winter suspension and resume later after procurement had been completed. Caltrans has determined that this project will not have a winter suspension and thus the 25 working days specified in the bid by Midstate is insufficient.

Therefore, based on the above, Caltrans has determined that the bid submitted by Midstate Barrier is nonresponsive.

Based on the above finding, the Department rescinds the award to Midstate Barrier, Inc. We apologize for any inconvenience this may have caused.

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

Sincerely,

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

[Home](#) → [Contract Awards and Services](#) → [Bidder Inquiries](#) > **Bidder Inquiries Viewing**

## Viewing inquiries for 04-4A3424

[Submit new inquiry for this project](#)

---

**Inquiry #1: "NOTICE to BIDDERS": Bids must be on a cost + time basis. This project is difficult to bid on an A+B basis. Overhead Sign Structure Trusses require significant time periods to fabricate. It may take 3-4 months to prepare shop drawings for submittal, receive review and approval by CDOT [up to 30 days per 56-3.01C(2)], procure material, manufacture, ship and install. Each of these processes can vary widely in duration depending on supplier backlog and time of the year. Please reconsider the A+B requirement, and make this a "unit price basis" project with a fixed 150 working days for completion.**

*Inquiry submitted 09/29/2014*

**Response #1: Submitted for consideration.**

*Response posted 09/30/2014*

**Response #2: This is an A + B project, bid per plans and specs.**

*Response posted 10/06/2014*

*The information provided in the responses to bidder inquiries is not a waiver of Section 2-1.03, "Examination of Plans, Specifications, Contract, and Site of Work," of the Standard Specifications or any other provision of the contract, nor to excuse the contractor from full compliance with the contract. Bidders are cautioned that subsequent responses or contract addenda may change a previous response.*

## NOTICE TO BIDDERS

Bids open Tuesday, May 15, 2012

Dated April 23, 2012

General work description: Replace damaged overhead signs.

The Department will receive sealed bids for CONSTRUCTION ON STATE HIGHWAY IN ALAMEDA AND SANTA CLARA COUNTIES AT VARIOUS LOCATIONS.

District-County-Route-Post Mile: 04-Ala,SCI-85,101,880-44.0, 19.9, 20.8

Contract No. 04-2G5904

The Contractor must have either a Class A license or any combination of the following Class C licenses which constitutes a majority of the work: C-8, C-51.

The DVBE Contract goal is 5 percent.

Bids must be on a unit price basis.

Complete the work within 100 working days.

The estimated cost of the project is \$840,000.

No prebid meeting is scheduled for this project.

The Department will receive bids until 2:00 p.m. on the bid open date at 1727 30th Street, Bidders' Exchange, MS 26, Sacramento, CA 95816. Bids received after this time will not be accepted. Department staff will direct the bidders to the bid opening.

The Department will open and publicly read the bids at the above location 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/oc/project\\_status/bid\\_inq.html](http://www.dot.ca.gov/hq/esc/oc/project_status/bid_inq.html)

Questions about alleged patent ambiguity of the plans, specifications, or estimate must be asked before bid opening. After bid opening, such questions will not be treated as bid protests.

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

Under Govt Code § 14835 et seq. and 2 CA Code of Regs § 1896 et seq., the Department gives preference to certified small businesses and non-small businesses who commit to 25 percent certified small business participation.

Under Pub Cont Code § 6107, the Department gives a reciprocal preference to a California company for bid comparison purposes over a nonresident contractor from any state that provides a preference to contractors from that state on construction contracts.

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 non-small business subcontractor preference is a reduction for bid comparison in the total bid submitted by the non-small business contractor requesting the preference by the lesser of:

1. 5 percent of the verified total bid of the low bidder
2. \$50,000

#### 2-1.02 DISABLED VETERAN BUSINESS ENTERPRISES

Take necessary and reasonable steps to ensure that DVBEs have opportunity to participate in the contract. Comply with Mil & Vet Code § 999 et seq.

Make work available to DVBEs and select work parts consistent with available DVBE subcontractors and suppliers.

Meet the goal shown in the Notice to Bidders.

Complete and submit the Certified DVBE Summary form. List all DVBE participation on this form. If you do not submit this form with your bid, submit it so that it is received by the Office Engineer no later than 4:00 p.m. on the 4th business day after bid opening. If a DVBE joint venture is used, submit the joint venture agreement with the Certified DVBE Summary form.

List each 1st tier DVBE subcontractor on the Subcontractor List form regardless of percentage of the total bid.

#### 2-1.03 CALIFORNIA COMPANIES

Under Pub Cont Code § 6107, the Department gives preference to a "California company," as defined, for bid comparison purposes over a nonresident contractor from any state that gives or requires a preference to be given to contractors from that state on its public entity construction contracts.

Complete a California Company Preference form.

The California company reciprocal preference amount is equal to the preference amount applied by the state of the nonresident contractor with the lowest responsive bid unless the California company is eligible for a small business preference or a non-small business subcontractor preference; in which case the preference amount is the greater of the two, but not both.

If the low bidder is not a California company and a California company's bid with reciprocal preference is equal to or less than the lowest bid, the Department awards the contract to the California company on the basis of its total bid.

#### 2-1.04 TIE BID RESOLUTION

If a small business bidder and a non-small business bidder request preferences and the reductions result in a tied bid, the Department awards the contract to the small business bidder.

If a DVBE small business bidder and a non-DVBE small business bidder request preferences and the reduction results in a tied bid, the Department awards the contract to the DVBE small business bidder.

After bid verification, if there is a tie between 2 or more bidders, the Department breaks the tie by tossing a coin.

#### 2-1.05 OPT OUT OF PAYMENT ADJUSTMENTS FOR PRICE INDEX FLUCTUATIONS

You may opt out of the payment adjustments for price index fluctuations as specified in "Payment Adjustments for Price Index Fluctuations" of these special provisions. If you elect to opt out of the provisions of this specification, you must complete the "Opt Out of Payment Adjustments for Price Index Fluctuations" form. The completed form must be submitted with your bid.

### SECTION 3 CONTRACT AWARD AND EXECUTION

#### 3-1.01 SMALL BUSINESS PARTICIPATION REPORT

The Department has established an overall 25 percent small business participation goal. To determine if the goal is achieved, the Department is tracking small business participation on all contracts.

Complete and sign the Small Business (SB) Participation Report form included in the contract documents even if no small business participation is reported. Submit it with the executed contract.

### SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION, AND LIQUIDATED DAMAGES

Complete the work within 100 working days starting on the 55th day after contract approval or on the day you start work at the job site, whichever occurs first.

# 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

<b>Send To:</b>	<u>Caltrans - Division of Engineering</u>	<b>From:</b>	<u>Clark D. Ebinger</u>
		<b>Office #</b>	<u>209-944-9565 X-501</u>
<b>Attn:</b>	<u>John McMillan</u>	<b>Fax #</b>	<u>209-944-9569</u>
	<u>Deputy Division Chief</u>		

<b>Fax:</b>	<u>(916) 227-6282</u>	<b>Pages:</b>	<u>67</u>
<b>Phone:</b>	<u>(916) 227-6299</u>	<b>Date:</b>	<u>12/24/14</u>

**Re:** Contract 04-4A3424 Notice of Award Rescission

Thank You,  
Clark D. Ebinger