



634 Printz Road

Arroyo Grande, Ca. 93420

Office (805) 489-7779 · Fax (805) 473-2479

November 11, 2014

State of California  
Department of Transportation  
MSC 43  
Office Engineer  
1727 30<sup>th</sup> Street  
Sacramento CA, 95816-6282

via Fax and US Mail

Facsimile Number 916-227-6282

Attn: John McMillan, Deputy Division Chief

RE: Bid Protest  
Contract 05-0R8304  
Bid Opening Date 10-15-2015

Please consider this letter a formal response to Afsar Law Group's (Afsar) second protest dated November 10, 2014, on behalf of Desert Construction Co., Inc. (DCCI), of the award of contract 05-0R8304 to Brough Construction, Inc. (BCI). Afsar alleges that BCI did not list Kelly Avila Construction Services (KACS) on our Subcontractor form for bid item 46, but included them on our DBE commitment form. Afsar is completely correct with their assertion. The DBE commitment form that we submitted clearly shows that for item 46, KACS is *supplying* the Detectable Warning Surface. KACS is not required to be listed on BCI's subcontractor form for bid item 46, because they are not a *subcontractor* for bid item 46. Please reference Caltrans Contract No. 05-1A7104, 06-0P1704, 09-287504, 07-1W5804 and many other contracts, where bid proposals were protested based upon the same assertion.

Furthermore, Afsar neglected to address these previously raised issues:

DCCI is *not* in compliance with section 4100 – 4114 of the Public contract code, or Caltrans standard procedures. For Example:

- (1) The subcontractor list DCCI submitted shows Super Seal for \$7,097.00 (Attachment B and C, with calculations) of subcontracted work. On the DBE commitment form DCCI claims Super Seal for \$17,181.00 (Attachment D). DCCI increased the dollar amount to meet the DBE goal; an inconsistent bid form and therefore, a non-responsive bid.
- (2) The DBE commitment form (Attachment E) that DCCI submitted also includes an additional subcontractor that was not listed on their subcontractor form; DCCI included Veridico Group Inc. for bid items 1, 5 & 6, at 100% for those items (Attachment F). More specifically bid item 5, Job Site Management, DCCI did not clearly indicate the scope that Veridico would be providing. The DBE commitment form clearly states "If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished". DCCI's DBE commitment form states the Veridico will be providing Job site Management which would be 100% of that bid item 5 (LS, \$40,000) which would put DCCI in violation of Public Contract Code Section 4104 (a), for not listing a subcontractor in excess of \$10,000.00.

Thank you,

John Souza

CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
TRANS BIDDER - DBE - COMMITMENT  
JE-0102.10C (NEW 06/2012)

This information may be submitted with your bid proposal. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received as specified in section 2 of the specifications. Failure to submit the required DBE information will be grounds for finding the bid nonresponsive.

CONTRACT NO: 05-OR8304  
BID AMOUNT: \$ 996,478-  
BID OPENING DATE: 10-15-14  
BIDDER'S NAME: Brough Construction Inc.  
DBE GOAL FROM CONTRACT, %: 13%  
DBE PRIME CONTRACTOR CERTIFICATION:

BID ITEM NO.	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED <sup>2</sup>	FOR CALTRANS USE ONLY	NAME OF DBEs (Must be certified on the date bids are opened - Include Caltrans certification #, DBE address and phone number) (Indicate 2nd and lower tier subcontractors)	DOLLAR AMOUNT DBE <sup>3</sup>
46	Supply Detectable Warning Surface		KELLI-Avila Construction, Inc. Box 2221 Atascadero CA (805) 461-1600 Cert # 38321	10,167.92

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective firms(s) of work listed above must be consistent, where applicable, with the names and firms of work in the "Subcontractor List" submitted with your bid. Copies of the DBE quotes are required.

1. DBE prime contractors must enter their certification number and indicate all work to be performed by DBEs including work performed by its own forces.
2. If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished.
3. See section 2-1.12 of the specifications to determine the credit allowed for DBE firms.

Total Claimed Participation

\$ 136,615.92

13.70 %

Signature of Bidder

10-16-14  
Date

805-489-7779  
(Area Code) Tel. No.

Person to Contact

(Please Type or Print)

Submit to:

MSC 43  
OFFICE ENGINEER  
DEPARTMENT OF TRANSPORTATION  
1727 34TH STREET  
SACRAMENTO, CA 95818-7005

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 854-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Oct. 14. 2014 4:45PM

Associated Traffic Safety  
KELLIE AVILA CONSTRUCTION SERVICES, INC.  
dba

No. 0188 P. 2/7



P.O. Box 2221 Alhambra, CA 91803 • Phone 805.481.1800 • Fax 805.481.1813  
DBE Firm ID - 38321 • Contractors License No. 882181

Bid Date 10/16/14

CONTRACT INFO

05-OR8304

THIS PROPOSAL AND ATTACHED PROVISIONS ARE TO BECOME A BINDING PART OF ANY  
SUBCONTRACT

ITEM	DESCRIPTION	UNIT	QTY	\$/UNIT	TOTAL
2	Construction Area Sign *Price above includes signs from SC-1, furnished, installed and removed * Associated Traffic Safety will notify USA for its work only at no extra charge to the general contractor	LS	1	LS	\$ 7,500.00 100
3	Traffic Control System * See attached for impact attenuator rates * Traffic plan not included in item * See next page for traffic control rates Portable Changeable Message Sign (PCMS) Per Each Rental Only * \$150.00/Day : \$400.00/ Week : \$1,200.00/Month * \$65.00 delivery fee per PCMS : \$85.00 pick up fee per PCMS Temporary Drainage Inlet Protection See attached for description and pricing * Material Purchase Only, Installation NOT included				← Part
13	Remove Roadside Sign * Treated wood waste plan not included in item	EA	1	\$ 100.00	\$ 100.00
17	Roadside Sign Exclusions: Must Arm Signs and or Illuminated Signs	EA	4	\$ 125.00	\$ 500.00
18	Relocate Roadside Sign	EA	8	\$ 150.00	\$ 1,200.00
	Rolled Erosion Control Product (Netting) Jute Netting 4' X 225'	EA			
	* Material Purchase Only, Installation & Tax NOT included				
	Fiber Rolls (Straw Waddle)	LF	800	\$ 1.00	\$ 800.00
	Fiber Rolls (Burlap Straw Waddle)	LF	800	\$ 1.70	\$ 1,020.00
	* Material Purchase Only, Installation & Tax NOT included				
36	Furnish Sign Single Sheet Aluminum - (0.083" - Unframed)	SQFT	21	\$ 16.50	\$ 346.50
37	Furnish Sign Single Sheet Aluminum - (0.080" - Unframed)	SQFT	10	\$ 18.00	\$ 180.00
38	Roadside Sign - One Post	EA	2	\$ 250.00	\$ 500.00
39	Install Sign (Strap & Saddle Bracket Method)	EA	1	\$ 150.00	\$ 150.00
46	Detectable Warning Surface (Wat-Sat)	SF	1010	\$ 14.40	\$ 14,544.00
	Detectable Warning Surface (RadMat) > 60%	SF	1010	\$ 15.50	\$ 15,655.00
	* Material Purchase Only, Installation & Tax NOT included				

Note: Item 13, 17, 18, 36, 37, 38 and 39 must be bid together and if used must bid with item 2.

Note: (1) addendums acknowledged

16,946.55 4/9m  
x 60%  
10,167.92

# Completing the Bid – Subcontractor Listing

**Public Contract Code 4104 requires listing of 1<sup>st</sup> tier subcontractors with the bid**

- performing at least 1/2 of 1 percent of the bid total or \$10,000, whichever is greater
- It is not necessary to list suppliers or truckers

The form must include subcontractor names, cities, percentages & items

For partial items, write “partial” and include work description

Group items by firm

Jan 07 08 12:48p Gallina Construction 590 848 8714 P-1

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**SUBCONTRACTOR LIST**  
 BIDDING NAME

Bidder must identify subcontractors performing work in an amount of at least 1/2 of 1 percent of the total bid (\$10,000).  
 \*Only list 10 suppliers (Plus City Code) + \$100,000

Firm Name/Address	Item No./%	Percent of Bid Item	Description of Subcontracted Work
Meyer-Fraser/Berkeley	6	92.6	Excavation
Meyer-Fraser/Berkeley	7	92.6	Imported Base
Meyer-Fraser/Berkeley	7	92.6	Mass Hot Mix Asphalt
Meyer-Fraser/Berkeley	13	4.4	Strength
Meyer-Fraser/Berkeley	13	8.1	Gravel
Art Design/De Castro	13	5.8	Drainage/Structural (Fishing)
Brubaker Tech/Santa Rosa	13	3.0	Doors/Windows
Flooring Solutions/Knoxville	13	1.7	Flooring
Ray-Kac/Mc. Shasta	13	3.7	HVAC
CARD Construction Electric/Leedville	13	3.0	Electrical
Walgreen/Leedville	13	2.0	Painting

\*If not specified within the bid, 1/2 the percent of 11 of the firm subcontracted by no less than 1/2 hour and not exceeding 10,000,000.

ALL BIDDERS FOR CONTRACTS SHALL BE REQUIRED TO INCLUDE A COMPLETE LIST OF ALL SUBCONTRACTORS WITH THE BID.

Contract No. 01-413304



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ARROYO GRANDE, CA. 93420  
OFFICE (805) 489-7779 · FAX (805) 473-2479

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**FACSIMILE TRANSMITTAL SHEET**

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To: John McMillan

From:

John Souza

916-227-6282

Fax Number:

Date:

11-11-14

COMPANY:

TOTAL NO. OF PAGES INCLUDING COVER:

5

PHONE NUMBER:

SENDER'S REFERENCE NUMBER:

Re:

YOUR REFERENCE NUMBER:

 URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

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**NOTES/COMMENTS:**

**ATTACHED IS OUR RESPONSE TO BID PROTEST # 2**

**FOR CONTRACT # 05-0R8304**

**BID DATE 10-15-2014**