

**DEPARTMENT OF TRANSPORTATION**

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER

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*Serious drought.  
Help save water!*

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)

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 <sup>a</sup>	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

<sup>a</sup>Submit 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