

PART 1 - GENERAL

1.01 DESCRIPTION

- A. This Specification requires that the three (3) lowest bidders submit, within one (1) business day of the Bid opening, one copy of all documentary information generated in the preparation of their Bid prices for this Project. This material is hereinafter referred to as "Escrow Bid Documents". The Escrow Bid Documents of the successful Bidder will be held in escrow for the duration of the Contract. As used herein, the successful Bidder shall hereinafter be referred to at times as the Contractor.
- B. Contractor agrees, as a condition of award of the Contract, that the Escrow Bid Documents constitute all of the information used to prepare its Bid, and that no other Bid preparation information will be considered in resolving disputes.
- C. Nothing in the Escrow Bid Documents will change or modify the terms or conditions of the Contract Documents.

1.02 DOCUMENT OWNERSHIP

- A. The Escrow Bid Documents are, and will always remain, the property of the Contractor, subject only to joint review by the Owner (and/or Owner's Representative) and the Contractor, as provided herein.
- B. The Owner stipulates and expressly acknowledges that the Escrow Bid Documents, as defined herein, may constitute trade secrets. This acknowledgment is based on the Owner's express understanding that the information contained in the Escrow Bid Documents is not known outside the Bidder's business, is known only to a limited extent and only by a limited number of employees of the Contractor, is safeguarded while in Contractor's possession, is extremely valuable to Contractor and could be extremely valuable to Contractor's competitors by virtue of it reflecting Contractor's pricing methods, productivity assumptions and contemplated techniques of construction. Owner acknowledges that the Contractor expended substantial sums of money in developing the information included in the Escrow Bid Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. Owner further acknowledges that the Escrow Bid Documents and the information contained therein are made available to the Owner only because such action is an express prerequisite to award of the Contract. The Owner acknowledges that the Escrow Bid Documents include a compilation of information used in the Contractor's business, intended to give the Contractor an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation. The Owner agrees to safeguard the Escrow Bid Documents, and all information contained therein, against disclosure to the fullest extent permitted by law. The Owner and Contractor also acknowledge, however, that some documents included in the Escrow Bid Documents do not constitute trade secrets. The inclusion of a document in the Escrow Bid Documents does not transform a document that does not constitute a trade secret, into a confidential trade secret merely by inclusion in the Escrow Bid Documents. Nonetheless, except as set forth herein, Owner will not disclose or utilize the copies of any documents deposited with the Escrow Bid Documents regardless of whether any given document constitutes a confidential trade secret.

1.03 PURPOSE

- A. Escrow Bid Documents will be used to assist in the negotiation of price adjustments and change orders and in the settlement of disputes, claims and other controversies. The copies deposited as Escrow Bid Documents by the apparent successful Bidder briefly will be reviewed by representative(s) of the Owner and the representatives of the Contractor prior to award to ensure compliance with these provisions, but will not be used for pre-award evaluation of the Contractor's anticipated methods of construction or to assess the Contractor's qualifications for performing the work.

1.04 FORMAT AND CONTENTS

- A. Bidders may submit Escrow Bid Documents in their usual cost estimating format. This Specification is not intended to cause the Bidder extra work during the preparation of its Bid, but to ensure that the Escrow Bid Documents will be adequate to enable complete understanding and proper interpretation for their intended use.
- B. The Escrow Bid Documents shall be in English.
- C. The Escrow Bid Documents shall clearly itemize the estimated costs of performing the work of each Bid Item contained in the Bid Schedule. Bid Items must be separated into sub-items as required to present a complete and detailed cost estimate and allow a detailed cost review. The Escrow Bid Documents will include all quantity takeoffs, crew, equipment, calculations of rates of production and progress, copies of quotations from Subcontractors and suppliers, and memoranda, narratives, consultant's reports, add/deduct sheets, and all other information used by the Contractor to arrive at the prices contained in the Bid proposal. Contractor shall break down estimated costs into the Contractor's usual estimate categories such as direct labor, repair labor, equipment operation, equipment ownership, expendable materials, permanent materials, General Conditions, and subcontract cost as appropriate. Contractor shall detail plant and equipment and indirect costs in the Contractor's usual format. The Contractor's allocation of plant and equipment, indirect costs, contingencies, markup and other items to each Bid item will be included.
- D. All costs will be identified. For Bid Items amounting to less than \$10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials, and subcontracts, as applicable, are included and provided that indirect costs, contingencies, and markup, as applicable, are allocated.
- E. Bid documents provided by the Owner will not be included in the Escrow Bid Documents unless needed to comply with the requirements of this Specification.

1.05 RELATED WORK

- A. Other sections of the Contract Documents, not referenced below, also will apply to the extent required for proper performance of this work.

1.06 REFERENCES

- A. "Avoiding and Resolving Disputes During Construction," American Society of Civil Engineers, 1991.

1.07 SUBMITTALS

- A. The Escrow Bid Documents shall be submitted in a sealed container by the three (3) lowest Bidders. The container will be clearly marked on the outside with the Bidder's name, date of submittal, project name and the words "Escrow Bid Documents".
- B. The Escrow Bid Documents will be accompanied with the attached Bid Documentation Certification, signed by an individual authorized by the Bidder to execute the bidding proposal, stating that the material in the Escrow Bid Documents constitutes all the documentary information used in preparation of the Bid and that he has personally examined the contents of the Escrow Bid Documents container and has found that the documents in the container are complete.
- C. Prior to award, Escrow Bid Documents of the apparent successful Bidder will be examined, organized and inventoried by representatives of the Owner and Engineer, together with members of the Contractor's staff who are knowledgeable about the Bid's preparation. If any Subcontractors object to Contractor participation in the examination of their bid documents, then the Subcontractor shall provide staff members to replace the Contractor's staff members. Bidders shall inquire and provide notice to Owner with the Escrow Bid Documents regarding any objections by Subcontractors to Contractor participation in this examination. The examination prior to Award of Contract is to ensure that the Escrow Bid Documents are authentic, legible, and complete. It will not include review of, and will not constitute approval of, proposed construction methods, estimating assumptions, or interpretations of Contract Documents. Examination will not alter any conditions or terms of the Contract.
- D. If all of the documentation required in Article 1.04, "Format and Contents", has not been included in the original submittal, Contractor shall submit additional documentation, at the Owner's discretion, prior to award of the Contract. The detailed breakdown of estimated costs will be reconciled and revised, if appropriate, by agreement between the Contractor and the Owner before making the award.
- E. If the Contract is not awarded to the apparent successful Bidder, the Escrow Bid Documents of the Bidder next to be considered for award will be processed as described.
- F. Timely submission of complete Escrow Bid Documents is an essential element of the Bidder's responsibility and a prerequisite to Contract award. Failure to provide the necessary Escrow Bid Documents will be sufficient cause for the Owner to reject the Bid.
- G. If the Bidder's proposal is based on subcontracting any part of the work, each Subcontractor, whose total subcontract price exceeds fifty thousand dollars (\$50,000), will provide separate Escrow Bid Documents to be included with those of the Bidder.

ESCROW BID DOCUMENTS PROVISION

These documents will be opened and examined in the same manner and at the same time as the examination described above for the apparent successful Bidder.

- H. If the Contractor wishes to subcontract any portion of the work after award, the Owner retains the right to require the Contractor to submit Escrow Bid Documents from the Subcontractor before the subcontract is approved.
- I. Escrow Bid Documents submitted by unsuccessful Bidders will be returned unopened, unless opened as provided above, following award of the Contract.

1.08 STORAGE

- A. The Escrow Bid Documents of the successful Bidder will be placed in escrow, under seal, for the life of the Contract, in a mutually agreeable location. The cost of storage will be paid by the Owner. No person may access, view, open, or otherwise disturb the sealed Escrow Bid Documents except as expressly provided herein.
- B. The Escrow Bid Documents of the remaining Bidders who were asked to submit Escrow Bid Documents, but were not considered, will be stored with the seal intact, unopened (except for inspections with Contractor as set out herein) by the Owner until the Contract is awarded.

1.09 EXAMINATION

- A. The Escrow Bid Documents will be examined by both the Owner's representatives and the Contractor and/or Subcontractor's representatives, upon request by the Owner after the initial negotiations on a disputed claim pursuant to the dispute resolution procedure provided in the Contract Documents, or at any time deemed necessary by the Contractor, to assist in the negotiation of price adjustments and change orders, or the settlement of disputes. All such examinations, however, shall be jointly made, and no copying or reproduction of any part of the Escrow Bid Documents will be permitted, without the written permission of the Contractor or Subcontractor. Such permission shall not be unreasonably withheld. After each examination, the container shall be resealed, so that such seal shall remain intact until the next examination.
- B. Examination of the Escrow Bid Documents is subject to the following conditions:
 - 1. As trade secrets, the Escrow Bid Documents are proprietary and confidential as described herein.
 - 2. The Owner and the Contractor and/or Subcontractor will each designate, in writing to the other party, no less than five days prior to examination, the representatives who are authorized to examine the Escrow Bid Documents. All such examinations shall be joint, and no copying or reproduction of any part of the Escrow Bid Documents shall be permitted without the written permission of the Contractor or Subcontractor, which consent shall not unreasonably be withheld. After each examination, the container shall be resealed, so that such seal shall remain intact until the next examination.

ESCROW BID DOCUMENTS PROVISION

3. Representatives of the Owner and Contractor and/or Subcontractor involved in a dispute may jointly examine the Escrow Bid Documents if required to assist in the settlement of a dispute. The Contractor or Subcontractor shall be precluded from the examination of one another's Escrow Bid Documents upon written request of the party submitting the Escrow Bid Documents. The Escrow Bid Documents will be reviewed upon receipt by representatives of the Owner only to determine apparent conformance with the escrow requirements as set out herein.
4. Access to the Escrow Bid Documents will take place only in the presence of duly designated representatives of the Owner and Contractor and/or Subcontractor.

1.10 FINAL DISPOSITION

- A. The Escrow Bid Documents will be returned to the Contractor at such time as the Contract has been completed and final settlement has been achieved. If the Contract is not awarded to a Contractor who deposits Escrow Bid Documents, those documents will be returned to the Contractor, with the seal intact upon award of the Contract to another Contractor.

ESCROW BID DOCUMENTS PROVISION

BID DOUCMENT

Certification

THE UNDERSIGNED HEREBY CERTIFIES THAT THE BID DOCUMENTATION CONTAINED HEREIN CONSTITUTES ALL OF THE INFORMATION USED IN PREPARATION OF ITS BID AND THAT I PERSONALLY HAVE EXAMINED THESE CONTENTS AND HAVE FOUND THE BID DOCUMENTATION TO BE COMPLETE.

NAME:

TITLE:

CONTRACTOR:

DATE:

END OF SECTION