



Bid Escrow Documents

(Reference CD-0036)

- (a) **Application.** This clause applies to all fixed priced subcontracts (except commercial off the shelf (COTS)) exceeding \$1,000,000, including any task release that exceeds \$1,000,000 under a Basic Ordering Agreement. The total value of the base award plus all option periods shall be used to determine whether the \$1,000,000 threshold is met.
- (b) **Submittal of Bid Documents.** The successful bidder or offer ("Seller") shall submit Bid Documents to the Procurement Representative within 10 calendar days of Subcontract award. The Bid Documents shall be submitted in a sealed container clearly marked "Bid Documents" and showing on its face Seller's name and address, submission date, and subcontract or task release number. Each service employee who will perform the services under the Agreement will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the Agreement period if the Agreement period is less than a month) servicing the Agreement.
- (c) **Bid Documents.** The term "Bid Documents" shall mean all writings, working papers, computer printouts, charts, and any other data compilations, which contain or reflect information, data, and calculations used by Seller to determine the bid or proposal; all quantity takeoffs, Seller equipment rates, Seller overhead rates, labor rates, efficiency or productivity factors, arithmetic extensions, and quotations from lower-tier subcontractors and material vendors to the extent such rates and quotations were used by Seller in formulating and determining the amount of the bid or proposal. Estimated cost should be broken into Seller's usual estimate categories such as direct labor, equipment, materials and Seller's lower-tier subcontractor or vendor costs as appropriate. Seller's allocation of indirect costs, contingencies, markups and other items (e.g., small tools, consumables, and safety supplies) allocated to each bid item shall be included. Bid Documents also include any standard industry manuals used by Seller in determining the bid or proposal. Such manuals may be included in the bid documents by reference. Such reference shall include the name and date of the publication, the publisher, and shall identify the referenced sections. Bid Documents do not include documents provided by the Company for use by Seller in preparing its bid or proposal.
- (d) **Certification.** A Certification by an individual authorized by the Seller to sign bids or proposals shall be delivered to the Procurement Representative in a sealed package containing the Bid Documents. The Certification must list each Bid Document with sufficient specificity so a comparison can be made between the list and the Bid Documents to ensure that all bid documents listed in the Certification have been enclosed in the sealed container. The Certification shall state that: (1) the certifier has personally examined the Bid Documents, (2) the Certification lists all of the documents used to prepare the bid or proposal price, and (3) all listed Bid Documents are contained in the sealed container.
- (e) **Duration and Use.** The Bid Documents and Certification shall be held in escrow by the Company's Director, Procurement Operations and Business Management.
- (1) The Bid Documents shall remain in escrow until Seller submits a request for equitable adjustment of over \$100,000, a claim of over \$100,000, a Termination Settlement Proposal over \$100,000 in a response to a termination for convenience, or initiates litigation or arbitration in any amount against the Company. At such time, Company has the right to unseal and use the Bid Documents and Certification only for purposes related to the equitable adjustment, claim, termination settlement, arbitration or litigation.

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- (2) Upon receipt of Seller's request for an equitable adjustment, claim or termination settlement proposal of over \$100,000 or the initiation by Seller of litigation or arbitration, the Company's Procurement Representative may request release of the Bid Documents and Certification from the Company's Director, Procurement Operations and Business Management. This request shall be in writing and the Seller shall be copied. If Seller believes that the Bid Documents are not relevant to the request for equitable adjustment, claim, termination settlement, litigation or arbitration, the Seller must within 10 calendar days of the request, by letter, notify the Procurement Representative of Seller's objection to request and the basis of that objection. After considering Seller's objection, the Company's Director, Procurement Operations and Business Management will decide whether or not to release the Bid Documents and Certification to the Company's Procurement Representative. The Company's Director, Procurement Operations and Business Management decision shall be final and binding and not subject to judicial review.
- (3) The escrowed Bid Documents and Certification will be returned to Seller at such time as the following conditions have been met: (a) final payment has been issued by Company, (b) all litigation/arbitration has been completed, and (c) Seller requests by letter the return of the Bid Documents and Certification by letter, affirming that no further litigation will be made. In the absence of such a letter, when the time allowed for the Seller to initiate litigation has elapsed, the Company shall destroy the Bid Documents and Certification.
- (f) **Refusal or failure to provide Bid Documents.** Refusal or failure to provide the Bid Documents shall be deemed a material breach of the Subcontract and the Seller will be declared in default of the Subcontract. The Company may at its option, terminate the Subcontract for default or take any other action available to it at law.
- (g) **Payment.** There will be no separate payment for compilation of the data, container, cost of verification of the Bid Documents, or any other cost. All costs shall be included in the overall Subcontract bid or proposal price.
- (h) **Seller shall insert this provision in all lower-tier subcontracts exceeding \$1,000,000.** Each lower-tier Subcontractor, within 10 calendar days of its award of a subcontract exceeding \$1,000,000, shall submit to Company's Director, Procurement Operations and Business Management, lower-tier Subcontractor's Bid Documents and Certification.