

SECTION 00 22 30

ESCROW BID DOCUMENTS

1.1 SCOPE AND PURPOSE

- A. This Document establishes a procedure to preserve all documentary information generated by Contractor in preparation of its Bid prices for the Contract Work (hereinafter, "Escrow Bid Documents"). The Escrow Bid Documents of Contractor will be held in escrow for the duration of the Contract. Such Documents will be available for use by the parties to assist in the negotiation of price adjustments and Change Orders and in the settlement of disputes and claims.
- B. Contractor agrees that the Escrow Bid Documents constitute all of the information used in the preparation of its Bid, and that no other Bid preparation information shall be considered in resolving disputes or claims. Contractor and City mutually agree that nothing in the Escrow Bid Documents shall change or modify the terms and conditions of the Contract Documents and that the Escrow Bid Documents shall be available exclusively to assist in the negotiation of price adjustments and Change Orders and in the resolution of disputes and claims.

1.2 FORMAT AND CONTENTS

- A. Contractor shall submit Escrow Bid Documents in its usual cost estimation format; a standard format is not required. The intent of the procedure set forth in this Document is not to cause Contractor 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. The Escrow Bid Documents must be in the language (i.e., English) of the Contract Documents.
- B. The Escrow Bid Documents must clearly itemize estimated costs of performing the Work of each Bid Item contained in the Schedule of Bid Prices. Bid Items should 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 shall include all quantity takeoffs, crew, equipment, calculations of rates of production and progress, copies of quotations from Subcontractors and Suppliers, and memoranda, narratives, add/deduct sheets, and all other information used by the Contractor to arrive at the prices contained in the Bid. Estimated costs should be broken down into the Contractor's usual estimate categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and subcontract costs, as appropriate. Plant and equipment and indirect costs should be detailed in the Contractor's usual format. The Contractor's reallocation of indirect costs, contingencies, markup and other items to each Bid Item shall be identified.
- C. All estimates for Items of Work that are based in whole or in part upon any baseline statements or information in the Geotechnical Baseline Report (GBR), shall clearly reference the baseline statements used. Contractor shall have no right to an adjustment to the Contract Sum or to the Contract Time (due to alleged Differing Site Conditions) unless such baseline statements have been clearly identified in the Escrow Bid Documents.
- D. All costs shall 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 markups, as applicable, are allocated.

- E. Bid Documents provided by the City need not be included in the Escrow Bid Documents unless necessary to comply with the requirements of this Paragraph 1.2.

1.3 SUBMITTAL

- A. Contractor shall submit a set of Escrow Bid Documents accompanied by a signed original Escrow Bid Documents Declaration form (refer to Section 00 49 16) after receiving notification of the award of Contract within the number of days indicated in Section 00 49 00. Contractor will not be allowed to begin Work until acceptable Escrow Bid Documents have been received by the City. Contractor shall:

1. Submit Escrow Bid Documents in a sealed container clearly marked on the outside with the Contractor's name, date of submittal, project name and the words: "Escrow Bid Documents - Open only in the presence of authorized representatives of both the City and Contractor." The Escrow Bid Documents may be submitted in hard copy or electronic format. If Contractor uses electronic format, submit Escrow Bid Documents in one or more PDF files (text-searchable highly preferred, but non-searchable is acceptable) stored in a digital memory device acceptable to the City (e.g., USB drive).
2. Attach the Escrow Bid Documents Declaration form (Section 00 49 16), executed under oath by an individual authorized by the Contractor to execute the Bid.
3. Make an appointment and deliver Escrow Bid Documents in person by an authorized representative of Contractor to:

Nicolas King
San Francisco Public Works
City and County of San Francisco
49 South Van Ness Avenue, Suite 1100
San Francisco, CA 94103
Telephone: 628-271-2957

4. Verification. At the time of submission, Escrow Bid Documents will be examined, organized and inventoried by representatives of the City, together with members of Contractor's staff who are knowledgeable of how the Bid was prepared. This examination is to ensure that the Escrow Bid Documents are legible and complete. The review will not constitute approval of proposed construction methods, estimating assumptions, or interpretations of the Contract Documents. Examination will not alter any term or condition of the Contract.
5. If all the documentation required by Paragraph 1.2, above, has not been included in the original submittal, Contractor shall submit additional documentation, at the City's sole discretion, within 24 hours after the original inventory and examination of the Escrow Bid Documents. The detailed breakdown of estimated costs shall be reconciled and revised, if appropriate, by agreement between the Contractor and the City.
6. The City, upon determining that the Escrow Bid Documents are complete, will, in the presence of Contractor's representative(s), place the complete Escrow Bid Documents (hard copy and/or electronic format) and Declaration in the container and seal it.
7. If Contractor's Total Bid Price is based upon subcontracting any part of the Work, Contractor shall also provide the Escrow Bid Documents for each Subcontractor required to be listed in accordance with section 4104 of the California Public Contract Code. The Subcontractors' Escrow Documents shall be opened and examined in the same manner and at the same time as the examination described above for Contractor.

8. For any portion of Work subcontracted after award or NTP, the City retains the right to require Contractor to submit Escrow Bid Documents from the proposed Subcontractor before such subcontract is approved.

1.4 REFUSAL OR FAILURE TO PROVIDE ESCROW BID DOCUMENTS

- A. Contractor's failure or refusal to provide Escrow Bid Documents or to cooperate in their verification shall be deemed either (i) failure to enter into the Contract if the Contract has not yet been executed or (ii) a material breach of the Contract if the Contract has been executed.
- B. Should Contractor fail to enter into the Contract as stated in (i), above, the City will retain the Bid Security. Should Contractor fail to provide Escrow Bid Documents or cooperate in their verification after execution of the Contract, the City may, at its option, terminate the Contract for default subject to the default provisions of the General Conditions (Section 00 72 00). These remedies are not exclusive and the City may take such other action as is available to it under the Contract and applicable law.

1.5 OWNERSHIP

- A. Escrow Bid Documents are, and shall always remain, the property of Contractor, subject to joint review by the City and Contractor as provided herein. The City stipulates and expressly acknowledges that the Escrow Bid Documents may constitute trade secrets and may contain information, which is known only to Contractor's business.
- B. The City will safeguard the Escrow Bid Documents, and all information contained therein, against disclosure to third parties to the fullest extent permitted by law.

1.6 EXAMINATION

- A. The Escrow Bid Documents will be examined by both the City and Contractor at any time deemed necessary by the City or Contractor to assist in the negotiation of price adjustments and Change Orders of the settlement of disputes and claims:
- B. Examination of the Escrow Bid Documents is subject to the following conditions:
 1. The City and Contractor shall each designate, in writing to the other party and 7 calendar days prior to any examination, representatives who are authorized to examine the Escrow Bid Documents. No other person shall have access to the Escrow Bid Documents. Contractor shall cooperate with the City in good faith to provide reasonable and timely access to Escrow Bid Documents including without limitation during DRB proceedings (e.g., hearings and position papers), Contract and Government Code Claims review, and/or litigation relating to the Contract.
 2. Access to the documents may take place only in the presence of duly designated representatives of both the City and Contractor.
 3. Reproduction of any portion of the Escrow Bid Documents will not be permitted at any time without the express written permission of the Contractor.
- C. The City's examination of Escrow Bid Documents shall not include review of, and will not constitute approval of, proposed construction methods, estimating assumptions, or interpretations of Contract Documents. Examination shall not alter any condition or term of the Contract.

1.7 STORAGE AND FINAL DISPOSITION

- A. The City will place Escrow Bid Documents in escrow for the duration of the Contract in a mutually agreeable location in San Francisco. The cost of storage will be paid by the City.
- B. Escrow Bid Documents will be returned to Contractor at such time as the Contract has been completed, final settlement of all pending claims has been achieved, and final payment has been issued by the City.

END OF SECTION