

**SECTION 103
AWARD AND EXECUTION OF CONTRACT**

Note to designers: Requests to use this specification must be submitted in writing to the Chief Contracts Officer or delegated authority in coordination with the Regional Chief of Contracts, with project-specific justification demonstrating high cost (over \$10M) and/or significant risk factors such as complex design, hazardous materials, differing site conditions, close proximity projects, projects with third-party involvement, or other potential major changes or claims.

Add the following subsection:

103-1.11 ESCROW OF BID DOCUMENTATION. Furnish a legible copy of your bid documentation and declaration, as instructed in writing by the Contracting Officer. Bid documentation consists of written documentation of all quantity takeoffs, construction schedules on which the bid is based, cost estimates, rates of production and progress, assumptions, calculations, quotes from subcontractors and suppliers, and other information used to prepare your bid for this project.

Obtain and furnish the same level of bid documentation, for each subcontractor, supplier or fabricator with a subcontract or agreement exceeding \$200,000, regardless of tier. Seal each entity's documentation in separate envelopes, labeled with the entity's name and address, submission date, and project name and number. Include a cover letter or quote signed by a responsible party.

Meet the following requirements:

1. Submitting Bid Documentation. Place bid documentation in a sealed container clearly marked "Bid Documentation" and labeled with the bidder's name and address, submission date, and project name and number. Deliver the sealed container to the Department-designated document Depository for safekeeping.
2. Declaration. As instructed in the Intent to Award, submit directly to the Contracting Officer a signed and certified declaration attesting that:
 - a. The declarant has examined the bid documentation and that the sealed container marked "Bid Documentation" includes all documents used to prepare the bid;
 - b. The sealed container contains all bid documentation submitted;
 - c. The escrow materials were relied on to prepare the bid; and
 - d. Should a dispute arise, the Contractor's rights to use bid preparation documentation other than those in escrow are waived.
3. Access and Use of Escrow Documents. The bid documentation will remain in escrow, without access by either party, except as otherwise provided herein. In the event the Contractor provides (1) a notice of intent to claim, (2) a claim, (3) a contract change order, or (4) initiates contract related litigation, the Department may obtain copies of the bid documentation as provided herein.

Both parties will submit to the Depository and copy to each other a list of personnel that are authorized to access the escrow documents. Use forms provided by the Depository.

Upon request, the Depository will set the time and place for access to escrow documents, will monitor the escrow documents review, and will arrange for a method of copying escrow

documents. Access to escrow documents shall require at least five days advance written notice so that the other party has the opportunity to witness the escrow review, examination and use. There is no requirement that both parties witness the escrow document review, but if one party is absent then the review must occur in the presence of a neutral third-party observer to be designated by the Depository.

Notwithstanding requirement 5 below, the Department will be allowed: to make copies of any and all escrow documentation (whether hard-copy, electronic, or otherwise); to use and review any copies made whether in the presence of the Contractor, or not; and to share copies with staff and consultants directly involved in the subject dispute.

Distribution is not authorized except as related to resolution of a dispute. The Department will be allowed to incorporate pertinent copies as supporting documentation in all significant contract change orders, contractual disputes, and the settlement of disputed claims.

The Department is not liable for any contractor costs associated with escrow review and use.

4. Failure to Provide Bid Documentation. Refusal or failure to provide your bid documentation or declaration renders your bid nonresponsive.
5. Confidentiality of Bid Documentation. Materials held in escrow are your property. Except as otherwise provided herein, the escrow materials cannot be released without your approval.
6. Cost and Escrow Instruction. The Department pays to store all escrowed materials and instructs the depository regarding escrow.
7. Payment. Include within the overall Contract bid price all costs to comply with this subsection.
8. Return of Escrow Documentation. The original escrow documents will be returned to you once litigation is concluded, outstanding claims are resolved, you have completed the Contract, and the Department receives an executed Contractor's Release (Form 25D-117) with no exceptions listed.