

SECTION 103

AWARD AND EXECUTION OF CONTRACT

Add the following subsection:

103-1.10. ESCROW OF BID DOCUMENTATION. Furnish a legible copy of your bid documentation and an affidavit, 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 with a subcontract exceeding \$200,000, regardless of tier.

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. Affidavit. Submit directly to the Contracting Officer a signed and certified affidavit attesting that
 - a. the affiant has examined the bid documentation and that it 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. Duration and Use. The bid documentation will remain in escrow, without access by either party, until one of the following occurs:
 - a. There is a dispute related to Change Order. With a neutral observer present, both parties will have joint access to review and copy the files.
 - b. The Contractor files a written claim or initiates Contract-related litigation against the Department. With a neutral observer present, both parties will have joint access to review and copy the files.
 - c. The Contractor completes the Contract and the Department receives an executed Contractor's Release (Form 25D-117) with no exceptions listed. Such action is sufficient grounds for the Contractor to obtain the release and custody of the escrow documentation.
4. Failure to Provide Bid Documentation. Refusal or failure to provide your bid documentation or affidavit renders your bid nonresponsive. Failure or refusal to provide Subcontractor bid documentation, will result in subcontract disapproval.

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. The original escrow materials are returned to you once any litigation is concluded, outstanding claims are resolved, and the final release is executed.
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.