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ESCROW BID DOCUMENTATION

1. Requirement to Escrow Bid Documentation

a. Contractor shall submit, within **SEVEN (7)** calendar days after the date of the Notice of Award, one copy of all documentary information received or generated by Contractor in preparation of bid prices for this Contract, as specified herein. This material is referred to herein as "Escrow Bid Documentation." The Escrow Bid Documentation of the Contractor will be held in escrow for the duration of the Contract.

b. Contractor agrees, as a condition of award of the Contract, that the Escrow Bid Documentation constitutes all written information used in the preparation of its bid, and that no other written bid preparation information shall be considered in resolving disputes or claims. Contractor also agrees that nothing in the Escrow Bid Documentation shall change or modify the terms or conditions of the Contract Documents.

c. The Escrow Bid Documentation will not be opened by District except as indicated herein. The Escrow Bid Documentation will be used only for the resolution of change orders and claims disputes.

d. Contractor's submission of the Escrow Bid Documentation, as with the bonds and insurance documents required, is considered an essential part of the Contract award. Should the Contractor fail to make the submission within the allowed time specified above, District may deem the Contractor to have failed to enter into the Contract, and the Contractor shall forfeit the amount of its bid security, accompanying the Contractor's bid, and District may award the Contract to the next lowest responsive responsible bidder.

e. NO PAYMENTS WILL BE MADE, NOR WILL DISTRICT ACCEPT PROPOSED CHANGE ORDERS UNTIL THE ABOVE REQUIRED INFORMATION IS SUBMITTED AND APPROVED.

f. The Escrow Bid Documentation shall be submitted in person by an authorized representative of the Contractor to the District.

2. Ownership of Escrow Bid Documentation

a. The Escrow Bid Documentation is, and shall always remain, the property of Contractor, subject to review by District, as provided herein.

b. Escrow Bid Documentation constitute trade secrets, not known outside Contractor's business, known only to a limited extent and only by a limited number of employees of Contractor, safeguarded while in Contractor's possession, extremely valuable to Contractor, and could be extremely valuable to Contractor's competitors by virtue of reflecting Contractor's contemplated techniques of construction. Subject to the provisions herein, District agrees to safeguard the Escrow Bid Documentation, and all

information contained therein, against disclosure to the fullest extent permitted by law.

3. Format and Contents of Escrow Bid Documentation

a. Contractor may submit Escrow Bid Documentation in its usual cost-estimating format; a standard format is not required. The Escrow Bid Documentation shall be submitted in the language (e.g., English) of the specification.

b. Escrow Bid Documentation must clearly itemize the estimated costs of performing the work of each bid item contained in the bid schedule, separating bid items into sub-items as required to present a detailed cost estimate and allow a detailed cost review. The Escrow Bid Documentation shall include all subcontractor bids or quotes, supplier bids or quotes, quantity takeoffs, crews, equipment, calculations of rates of production and progress, copies of quotes 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 proposal. Estimated costs should be broken down into Contractor's usual estimate categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and subcontract costs as appropriate. All labor rates must be broken down to specify any and all burden costs including, but not limited to, health and welfare pay, vacation and holiday pay, pension contributions, training rates, benefits of any kind, insurance of any kind, workers' compensation, liability insurance, truck expenses, supply expenses of any kind, payroll taxes, and any other taxes of any kind. Plant and equipment and indirect costs should be detailed in the Contractor's usual format. The Contractor's allocation of indirect costs, contingencies, markup, and other items to each bid item shall be identified.

c. 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 markup, as applicable, are allocated.

d. Bid Documentation provided by District should not be included in the Escrow Bid Documentation unless needed to comply with the following requirements.

4. Submittal of Escrow Bid Documentation

a. The Escrow Bid Documentation shall be submitted by the Contractor in a sealed container within **SEVEN (7)** calendar days after the date of the Notice of Award. The container shall be clearly marked on the outside with the Contractor's name, date of submittal, project name and the words "Escrow Bid Documentation – Intended to be opened in the presence of Authorized Representatives of Both District and Contractor".

b. By submitting Escrow Bid Documentation, Contractor represents that the material in the Escrow Bid Documentation constitutes all the documentary information used in preparation of the bid and that the Contractor has

personally examined the contents of the Escrow Bid Documentation container and has found that the documents in the container are complete.

c. If Contractor's proposal is based upon subcontracting any part of the work, each subcontractor whose total subcontract price exceeds 5 percent of the total contract price proposed by Contractor, shall provide separate Escrow Documents to be included with those of Contractor. Those documents shall be opened and examined in the same manner and at the same time as the examination described above for Contractor.

d. If Contractor wishes to subcontract any portion of the Work after award, District retains the right to require Contractor to submit Escrow Documents for the Subcontractor before the subcontract is approved.

5. Storage, Examination and Final Disposition of Escrow Bid Documentation

a. The Escrow Bid Documentation will be placed in escrow, for the life of the Contract, in a mutually agreeable institution. The cost of storage will be paid by Contractor for the duration of the project until final Contract payment. The storage facilities shall be the appropriate size for all the Escrow Bid Documentation and located conveniently to both District's and Contractor's offices.

b. The Escrow Bid Documentation shall be examined by both District and Contractor, at any time deemed necessary by either District or Contractor, to assist in the negotiation of price adjustments and change orders or the settlement of disputes and claims. In the case of legal proceedings, Escrow Bid Documentation shall be used subject to the terms of an appropriate protective order if requested by Contractor and ordered by a court of competent jurisdiction. Examination of the Escrow Bid Documentation is subject to the following conditions:

(1) As trade secrets, the Escrow Bid Documentation is proprietary and confidential to the extent allowed by law.

(2) District and Contractor shall each designate, in writing to the other party **SEVEN (7)** calendar days prior to any examination, the names of representatives who are authorized to examine the Escrow Bid Documentation. No other person shall have access to the Escrow Bid Documentation.

(3) Access to the documents may take place only in the presence of duly designated representatives of the District and Contractor. If Contractor fails to designate a representative or appear for joint examination on **SEVEN (7)** calendar days' notice, then the District representative may examine the Escrow Bid Documents alone upon an additional **THREE (3)** calendar days' notice if a representative of the Contractor does not appear at the time set.

(4) If a subcontractor has submitted sealed information to be included in the Escrow Bid Documents, access to those documents may take place only in the presence of a duly designated representative of the District,

Contractor and that subcontractor. If that subcontractor fails to designate a representative or appear for joint examination on **SEVEN (7)** calendar days' notice, then the District representative and/or the Contractor may examine the Escrow Bid Documentation without that subcontractor present upon an additional **THREE (3)** calendar days' notice if a representative of that subcontractor does not appear at the time set.

c. The Escrow Bid Documentation will be returned to Contractor at such time as the Contract has been completed and final settlement has been achieved.

END OF DOCUMENT