

**ESCROW OF BID DOCUMENTS
(Company) (Jan 2010)**

- a) **Application.** This clause applies to all fixed priced subcontracts 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 Company within 10 days of Subcontract award. The bid documents shall be submitted in a sealed container clearly marked “Bid Documents” and showing on its face the Seller’s name and address, submission date, and subcontract or task release number. If the Seller prefers to submit its bid documents in electronic format, Seller must identify the electronic format and obtain written approval from the Company.

- 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 Sellers 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 lower-tier Seller 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 Company at the same time as 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 Procurement Manager.
 - 1. The Bid Documents shall remain in escrow until the Seller submits a request for equitable adjustment of over \$100,000, a claim of over \$100,000, or initiates litigation or arbitration in any amount against the Company. At such time, the Company has the right to use the Bid Documents and Certification only for purposes related to the equitable adjustment, claim, arbitration or litigation.

2. Upon receipt of Seller's request for an equitable adjustment or claim of over \$100,000 or the initiation by Seller of litigation or arbitration, the Company's Subcontract Administrator may request release of the Bid Documents and Certification from the Company's Procurement Manager. This request shall be in writing and the Seller shall be copied. If the Seller believes that the Bid Documents are not relevant to the request for equitable adjustment, claim, litigation or arbitration, the Seller must within 10 calendar days of the request, by letter, notify the Company's Procurement Manager of Seller's objection to request and the basis of that objection. After considering Seller's objection, the Company's Procurement Manager will decide whether or not to release the Bid Documents and Certification to the Company's Subcontract Administrator. The Company's Procurement Manager's decision shall be final and binding and not subject to judicial review.
 3. The escrowed Bid Documents and Certification will be returned to the Seller at such time as the following conditions have been met: (a) final payment has been issued by the Company, (b) all litigation/arbitration has been completed, and (c) Seller requests 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 days of its award of a subcontract exceeding \$1,000,000, shall submit to Company's Procurement Manager, lower-tier Subcontractor's Bid Documents and Certification.

(End of Clause)