



**SPECIAL PROVISIONS
FOR
ESCROW OF BID DOCUMENTS**

**Allamakee County
STP-009-9(82)--2C-03
STP-009-9(83)--2C-03
STP-009-9(84)--2C-03**

**Effective Date
August 1, 2023**

THE STANDARD SPECIFICATIONS, SERIES 2015, ARE AMENDED BY THE FOLLOWING MODIFICATIONS AND ADDITIONS. THESE ARE SPECIAL PROVISIONS AND THEY SHALL PREVAIL OVER THOSE PUBLISHED IN THE STANDARD SPECIFICATIONS.

159001a.01 DESCRIPTION.

- A.** The purpose of this special provision is to preserve the Contractor's bid documents for use by the Department in the resolution of claims and disputes during claim evaluation, negotiation, mediation, arbitration, and litigation.
- B.** The Department will not use escrow documents to assess the Contractor's qualifications for performing the work. The escrow documents are, and will always remain, the property of the Contractor, subject to review by the Department, as provided in this special provision.
- C.** The escrow documents shall consist of all documents generated, relied upon, or used by the Contractor in preparation of the Contractor's proposal. This includes handwritten notes, records of phone conversations and phone quotes, letters, faxes, e-mails both printed and electronically archived, formal quotations, calculations, spreadsheets, work sheets, conceptual progress schedules, marked up plan sheets, quantity take-offs, estimated quantities and costs, and any other record of how the work was originally bid. These documents will be held in escrow for the duration of the contract. These documents shall be provided to the escrow agent in both native and .pdf formats and submitted on a CD(s) or USB flash drive.
- D.** The Contractor shall select the escrow agent. To be eligible, the escrow agent must satisfy the following criteria for the duration of the contract:
 - 1.** Must be an Iowa attorney whose license to practice law is in good standing with the State of Iowa;
 - 2.** Must remain impartial for the duration of the contract (i.e., cannot represent the Contractor or

the Department in any claims or litigation whatsoever under the contract.); and

3. Must sign and agree to be bound by the escrow agreement attached to this special provision as Exhibit A, Escrow Agreement.

159001a.02 SUBMITTAL.

- A. The low bidder shall submit its escrow documents to the escrow agent not later than 4:00 p.m. ~~the next business day after the bid opening~~ on Monday August 7, 2023. The escrow documents shall be submitted in a sealed container containing only the escrow documents. Clearly mark the container with the Contractor's name, date of submittal, project name and number, and the words "Escrow documents."
- B. The escrow documents submittal shall be in accordance with this special provision. Failure of the low bidder to submit its escrow documents in a timely manner as defined above will result in a determination by the Department that the bid submitted by that bidder is non-responsive and will be just and sufficient cause for forfeiture of the proposal guaranty to the Department.
- C. The Contractor shall provide to the Department the completed Escrow Agreement, including Escrow Agent receipt, to confirm the escrow arrangement is in place.

159001a.03 STIPULATIONS AND ACKNOWLEDGEMENTS.

- A. The Department acknowledges that Contractor deems the escrow documents as being non-public, confidential, a trade secret or proprietary in nature. By submitting its bid, the Contractor represents it has independently taken the necessary steps and precautions to preserve and safeguard the escrow documents and the information contained therein as a valuable asset of the Contractor.
- B. The Department acknowledges and agrees that the Contractor is and shall remain the sole owner of all escrow documents. The Department shall not use the escrow documents or any information contained therein for any purpose other than as set forth in this Agreement.
- C. Contractor acknowledges and agrees that a limited number of third-party consultants, vendors, or contractors assisting the Department in the resolution of claims and disputes during claim evaluation, negotiation, mediation, arbitration, and litigation may be given access to the escrow documents and the information contained therein by the Department on the condition that each such third-party is informed of the existence of this special provision and has agreed to be bound by its terms.
- D. The Contractor agrees and represents, as a requirement of the contract, that the escrow documents constitute all the information used by the Contractor in the preparation of its bid, and that no other bid preparation information exists or will be used by the Contractor to establish or prove the baseline of its bid as part of any claim for extra compensation under the contract. The Contractor also agrees that nothing in the escrow documentation shall change or modify the terms or conditions of the contract documents. If the CD or USB flash drive provided to the Escrow Agent under seal do not contain any bid preparation information, the Contractor hereby waives any and all claims for extra compensation under the contract.
- E. The Department shall not disclose any escrow document or any information contained within any escrow document to a third-party other than as set forth in this special provision or as required by law, including Iowa Code chapter 22. In the event the Department receives a written request or judicial order to disclose any escrow document or any information contained within any escrow document, the Department shall provide the Contractor written notice of such request within 7 calendar days of receipt of such request or order so that the Contractor may seek an appropriate protective order. This provision shall not restrict the disclosure by the Department of any information which falls into any of the following categories:

1. Information within the public domain, except that which has come in the public domain solely through the Department's disclosure; or
2. Information which was lawfully available to the Department on a non-confidential basis prior to its disclosure hereunder; or
3. Information which was developed independently by the Department prior to the date of this contract.

159001a.04 FORMAT AND CONTENTS.

- A. The Contractor shall submit the escrow documents in both native and .pdf formats.
- B. The Contractor shall ensure that the escrow documents clearly itemize the estimated costs of performing the work of each contract item in the proposal. Separate contract items into such items necessary to present a complete and detailed estimate of all costs. Detail the plant, equipment, labor, material, and indirect costs in the Contractor's and its subcontractors' usual formats. Ensure that the allocation of contingencies, mark ups, and other items are identified for each contract item.
- C. The Contractor shall identify all elements of pricing developed solely based on experience or market factors, and for which a detailed cost estimate does not exist. For contract items amounting to less than \$10,000 in total, the Contractor may provide estimated costs without a detailed cost estimate.
- D. The Contractor shall ensure that the escrow documents include all quantity take-offs, calculations of rates of production and progress, all documentation from subcontractors and suppliers relied upon by the Contractor in formulating its bid, memoranda, narratives, add/deduct sheets, and all other information used by the Contractor to arrive at the prices contained in the proposal.

159001a.05 LATE REVISIONS.

If the itemized cost breakdowns and allocations described elsewhere are not revised to reflect the final bid prices, then submit information reconciling the bid preparation documents and the bid unit prices. Consider this reconciliation as a part of the escrow documents and include in the submittal.

159001a.06 EXAMINATION.

- A. The Department Director or his or her designee(s) may examine the escrow documents, to assist in the resolution of disputes and claims during claim evaluation, negotiation, mediation, arbitration, and litigation only after a triggering event occurs.
- B. The Department, without the Contractor's signed consent, may access the escrow documents after any one of the following events occurs (i.e., triggering events):
 1. The Contractor has provided written notification to the Department of the Contractor's intention to file a claim for extra compensation under the contract; or
 2. The Contractor has initiated legal proceedings against the Department relating to the contract through litigation or alternative dispute resolution.
- C. Prior to any release from escrow to the Department, the Department shall provide written notice to the Contractor and escrow agent of the occurrence of a triggering event and the Department's intention to access the escrow documents. Such written notice from the Department shall be approved by the Directors of the Contracts and Specifications Bureau and the Construction and Materials Bureau and sent no less than 10 calendar days prior to release to the Department. Further, the written notice will indicate a certain date and time when the escrow documents will be released. The escrow agent shall release the escrow documents to the Department as of the date

and time indicated in the notice. No action by or authorization from the Contractor is necessary in order for the escrow agent to release the escrow documents to the Department as set forth in this special provision (i.e., the release shall be self-executing).

159001a.07 FINAL DISPOSITION.

The Department will release the escrow documents to the Contractor after completion of the contract and after all disputes and claims have been resolved and the contract is closed out.

159001a.08 NOTICES

All notices and other communication shall be in writing and shall be deemed to have been duly given and delivered if sent via electronic mail, facsimile, or mailed by certified mail, return receipt requested, postage prepaid.

159001a.09 METHOD OF MEASUREMENT AND BASIS OF PAYMENT.

Escrow of Bid Documents will be paid for as a lump sum bid item. The Contractor will be paid the lump sum contract price within 30 calendar days after receipt of a signed contract.

EXHIBIT A
ESCROW AGREEMENT

This ESCROW AGREEMENT (the “Agreement”), dated as of _____
is entered into by and between _____ (“Contractor”) and
_____ (“Escrow Agent”). The Contractor and Escrow Agent shall
be collectively referred to herein as the “Parties”.

WITNESSETH

WHEREAS, the Contractor is the low bidder on a transportation construction project with the Iowa Department of Transportation (“Department”); and

WHEREAS, the Contractor is required to escrow its bid preparation documentation (“Escrow Documents”) with a third-party as a condition of the Contractor’s contract with the Department; and

WHEREAS, the Contractor is willing to procure from the Escrow Agent, and the Escrow Agent is willing to provide to the Contractor, the escrow services described in this Agreement on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties intending to be bound by the terms and conditions contained herein, hereby agree as follows:

TERMS AND CONDITIONS

1. The Contractor shall provide to the Escrow Agent a sealed package containing only a CD or USB flash drive containing the Escrow Documents. The sealed package shall be clearly marked with the Contractor’s name, date of submittal, project name and number, and the words “Escrow Documents”.
2. The Escrow Agent shall hold the Escrow Documents in escrow pursuant to this Agreement.
3. Upon receipt by the Escrow Agent of a written notice from the Department indicating the Department’s intention to access the escrow document, the Escrow Agent shall release the escrow documents to the Department as of the date and time indicated in the notice. No action by or authorization from the Contractor is necessary in order for the Escrow Agent to release the escrow documents to the Department (i.e., the release shall be self-executing).
4. The Escrow Agent acknowledges that Contractor deems the Escrow Documents as being non-public, confidential, a trade secret or proprietary in nature. The Contractor represents it has independently taken the necessary steps and precautions to preserve and safeguard such information as a valuable asset of the Contractor.

5. The Escrow Agent acknowledges and agrees that the Contractor is and shall remain the sole owner of the Escrow Documents.

6. The Escrow Agent shall not disclose or take any action with respect to the Escrow Documents other than as set forth in this Agreement, unless directed otherwise in writing by both the Contractor and the Department or compelled otherwise by judicial or other legal process.

7. In the event the Escrow Agent receives a judicial order or other legal process to disclose the Escrow Documents or any information contained therein to a third-party, the Escrow Agent shall give the Contractor written notice of such request within seven (7) calendar days of receipt of such request or order so that the Contractor may seek an appropriate protective order.

8. The terms of this Agreement will remain in effect as written unless and until modified in writing signed by both the Contractor and the Department, or until terminated by the Department in writing. It is understood and agreed that termination of this Agreement for any reason whatsoever, shall not affect any obligation with respect to this Agreement prior to such termination and the obligation to not disclose or utilize the Escrow Documents or any information contained therein shall survive such termination. This Agreement may be executed in counterparts, each of which when taken together shall constitute one and the same instrument. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. Each of the provisions of this Agreement shall be enforceable independently of any other provision of this Agreement and independent of any other claim or cause of action. In the event of any matter or dispute arising out of or related to this Agreement, it is agreed between the Parties that the law of the State of Iowa (including statute of limitations provisions) shall govern the interpretation, validity and effect of this Agreement without regard to the place of execution or performance, or any conflicts of law provisions. The Recitals contained above are repeated verbatim and are made a part of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

[SIGNATURE PAGE FOLLOWS]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CONTRACTOR

By: _____

Printed:

Title:

STATE OF _____, COUNTY OF _____

This instrument was acknowledged before me on

_____, by _____ as
_____ of _____.

Signature of Notary Public

ESCROW AGENT

By: _____

Printed:

Title:

STATE OF _____, COUNTY OF _____

This instrument was acknowledged before me on

_____, by _____ as
_____ of _____.

Signature of Notary Public

RECEIPT

The undersigned Escrow Agent hereby acknowledges receipt of the above-described Escrow Documents and agrees to serve as Escrow Agent in accordance with the terms and provisions of this Agreement.

ESCROW AGENT

By: _____

Printed:

Title:

Dated at _____, on _____