

**CONTRACTOR'S RECORDS.
(REV 4-13-06)**

ARTICLE 3-8 is deleted and the following substituted:

3-8 Contractor's Records.

3-8.1 Escrowing of Bid Documents:

3-8.1.1 Escrow Agreement: Execute both the Bid Document Escrow Agreement (hereinafter referred to as Escrow Agreement) and the Bid Document Confidentiality Agreement As To Trade Secret & Proprietary Documents (hereinafter referred to as Confidentiality Agreement), each of which are included in the bid solicitation package, at the time of execution of the Contract. Failure to execute both the Escrow Agreement and the Confidentiality Agreement, when presented, may result in declaration of the Contractor to be in default and termination of the Contract, or in the event the Contract has not been executed, may result in retention of the Contractor's bid bond.

3-8.1.2 Bid Documents: The term "bid documents" as used in this article shall mean all writings, working papers, computer printouts, charts, and any other data compilations, which contain or reflect all information, data, and calculations used by the Contractor to determine the bid in bidding for the project; all quantity take offs, Contractor equipment rates, Contractor overhead rates, labor rates, efficiency or productivity factors, arithmetic extensions, and quotations from subcontractors and material suppliers to the extent that such rates and quotations were used by the Contractor in formulating and determining the amount of the bid. Estimated cost should be broken into the bidder's usual estimate categories such as direct labor, equipment operations, expendable materials, permanent materials and subcontract costs as appropriate. Plant and equipment and indirect costs should be detailed in the bidder's usual format. The Contractor's allocation of plant and equipment, indirect costs, contingencies, markup and other items allocated to each bid item must also be included. All costs will be identified.

"Bid documents" also include any standard industry manuals used by the Contractor in determining the bid for the project. Such manuals may be included in the bid documents by reference. "Bid documents" do not include documents provided by the Department for use by the Contractor in bidding on the project.

3-8.1.3 Submittal of Bid Documents: Deliver a legible copy of all bid documents to the escrow agent identified in the Escrow Agreement with the executed contract and the executed Escrow Agreement to the Department. Submit the bid documents in a sealed container(s). Clearly mark the container(s) "Bid Documents" and show the Contractor's name, the date of submittal, the number of containers (i.e., box 1 of 3, 2 of 3, etc.), the project title and the Contract number on the face of the container.

3-8.1.4 Affidavit: The term "Affidavit" as used in this article shall mean the Bid Document Escrow Affidavit. An Affidavit signed under oath by an individual authorized by the Contractor to execute bidding proposals must be delivered to the Department at the time of submission of the bid documents, the executed contract and the executed Escrow Agreement. The Affidavit 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 of the bid documents listed in the Affidavit have been enclosed in the sealed container. The Affidavit shall attest that the affiant has personally examined the bid

documents and that the Affidavit lists all of the documents used by the Contractor to determine the bid for the project and that all such bid documents have been enclosed in the sealed container(s). Complete and execute the Affidavit included in the bid solicitation package.

3-8.1.5 Supplemental Bid Documents: Documents listed in the Affidavit but not enclosed, or bid documents omitted through error or oversight, must be submitted to the Department within five calendar days of delivery of the original escrowed bid documents. Also, any bid document that is illegible must be replaced with legible copies and furnished within five calendar days. Show on the face of the container(s) the same information as the original container(s) except mark the container "Supplemental Bid Documents". When verifying the contents of the supplemental submittal, use the same procedure used in verifying the original container(s).

3-8.1.6 Duration and Use: The bid documents and Affidavit will remain in escrow during the duration of the Contract and until such time as the Contractor's right to initiate litigation against the Department related to the Contract has expired, whichever event occurs last. Bid documents must be made available to the Department and the Department's representatives for inspection and copying in the event of any DRB hearing that reasonably implicates the Contractor's bid estimating, bid submittal process, costs, or decisions, on the Contract or any litigation between the Contractor and the Department, whether in circuit court or arbitration, relating to the Contract. If the Contractor has signed the Full Acceptance Letter and has not reserved any claims against the Department, the bid documentations and Affidavit will be returned to the Contractor. In the event that claims against the Department are reserved on the Qualified Acceptance Letter the bid documents and Affidavit will remain in escrow. Thereafter, the bid documents and Affidavit will be returned to the Contractor if litigation is not commenced within the time period prescribed by law. Notification that the Contractor has initiated litigation against the Department, whether in circuit court or arbitration, will be construed as permission for the Department to obtain the release and custody of the bid documentation or in the instance of a DRB issue reasonably implicating the Contractor's bid estimating, bid submittal process, costs, or decisions, on the Contract a determination by the DRB that a reasonable implication potentially exists as related to one or more of the above issues pending before the DRB.

The Contractor agrees that the sealed container(s) placed in escrow and any supplemental sealed container(s) placed in escrow contain all of the bid documents used to determine the bid and that no other bid documents will be utilized by the Contractor in litigation over claims brought by the Contractor, whether in circuit court or arbitration, arising out of this Contract.

3-8.1.7 Refusal or Failure to Provide Bid Documents: Contractor's failure or refusal to provide bid documents or to cooperate in their verification will be deemed a material breach of the Contract. The Department may at its option refuse to make payment for progress estimates until the Contractor has submitted the bid documents required by this Specification. The Department may at its option terminate the Contract for default for failure of the Contractor to provide the bid documents in accordance with this Article. In addition, providing timely and proper bid documentation as required herein, is a condition precedent to the Contractor bringing any action against the Department, whether in circuit court or arbitration, arising out of the Contract. These

remedies are not exclusive and the Department may take such other action as is lawfully available.

3-8.1.8 Confidentiality: The bid documentation and Affidavit in escrow are and will remain the Contractor's property. Such bid documents must be available to the Department and the Department's representatives for inspection and copying in the event of any DRB hearing that reasonably implicates the Contractor's bid estimating, bid submittal process, costs, or decisions, on the Contract or any litigation between the Contractor and the Department, whether in circuit court or arbitration, relating to the Contract.

3-8.1.9 Cost: The cost of maintaining the escrow facility will be borne by the Department. Notwithstanding the above, there will be no separate payment for compilation of the data, container(s), or any other Contractor expense for complying with this Specification, and all such costs must be included in the Contract bid price.

3-8.2 Audit of Records: Upon execution of the Contract, the Department reserves the right to conduct an audit of any and all of the Contractor's records pertaining to the project. The Department or its representatives may conduct an audit, or audits, at any time prior to final payment, or thereafter pursuant to 5-13. The Department may also require submittal of the records from either the prime contractor, the subcontractor, or both. As the Department deems necessary, records include all books of account, supporting documents, and papers pertaining to the cost of performance of the project work. To the extent the Contractor asserts that one or more such Contractor, subcontractor, or supplier, records are privileged or confidential as trade secret or proprietary, the Contractor shall nevertheless specifically identify and describe with particularity each such record and thereafter immediately produce the same for inspection and copying upon the Department's execution of a confidentiality agreement in the form and substance as set forth in the attached sample.

The Department may disqualify or suspend the Contractor from bidding on or working as a subcontractor on future Contracts for failure to comply with these requirements. Ensure that the subcontractors provide access to their records pertaining to the Contract upon request by the Department.