

REVISION OF SECTION 103
ESCROW OF PROPOSAL DOCUMENTATION

NOTICE

This is a standard special provision that revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT's Project Development Branch with formal instructions for its use on CDOT construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT construction projects, and do not use this special provision on CDOT projects in a manner other than that specified in the instructions unless such use is first approved by the Standards and Specifications Unit of the Project Development Branch. The instructions for use on CDOT construction projects appear below.

Other agencies which use the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision as appropriate and at their own risk.

Instructions for use on CDOT construction projects:

Use sparingly on projects approved by the Region Program Engineer that meet the following criteria:

- (1) Project with estimated contract amount greater than \$3,000,000, *or*
- (2) Complex project that has one or more of the following elements:
 - A: Tunneling work.
 - B: Overlapping or close proximity projects that could result in conflicting construction schedules/ delays.
 - C: Complex structures with state of the art design.
 - D: Project that has a high risk of encountering unknown hazardous materials which may change the scope of the work or delay the project.
 - E: Project that has entity (other governmental or private agency) involvement and there is a good possibility that the entity will request major changes to the Contract.

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Section 103 of the Standard Specifications is hereby revised for this project as follows:

Add subsection 103.05 as follows:

103.05 Escrow of Proposal Documentation (EPD). The successful bidder, and subcontractors with subcontracts exceeding \$200,000, shall submit all information and calculations used to determine their bid for this project prior to executing the Contract. This documentation hereinafter referred to as "Escrow of Proposal Documentation" or "EPD", will be held in escrow for the duration of the Contract. If necessary, it will be used for the purpose of determining the Contractor's proposal concept, for price adjustments as provided in the Contract, or to resolve any dispute or claim by the Contractor.

- (a) *Format.* Bidders and subcontractors are encouraged to submit the EPD in their usual cost-estimating format; a standard format is not required. It is not the intention of this specification to cause extra work during the preparation of a proposal, but to ensure that the documentation will be adequate to enable complete understanding and proper interpretation for the intended use.

The EPD shall clearly itemize the costs for each pay item. Each pay item shall be broken down into components small enough to allow a detailed cost estimate. Costs allocated to each component shall be broken down into the bidder's usual estimate categories such as direct labor, repair labor, equipment parts and supplies, expendable materials, permanent materials, and subcontractor cost as appropriate. Plant and equipment and indirect cost shall be broken down in the bidder's usual format. Plant and equipment and indirect cost allocations shall be made to each bid item as appropriate. All costs shall be identified.

The EPD shall include quantity takeoffs, construction schedule on which the bid is based, rates of production and progress, calculations, copies and quotes from subcontractors and suppliers, memoranda, narratives, and all other information used by the bidder to arrive at all of the prices contained in the proposal. Manuals standard to the industry that are used by the Contractor may be included by reference to the name, date, and publisher of the manual.

- (b) *Submittal.* The EPD shall be submitted to the Engineer in a sealed container, prior to executing the Contract, and shall be clearly marked with the bidder's name, date of submittal, project number, and "Escrow of Proposal Documentation." The EPD shall be accompanied with an affidavit, in the form following this subsection, signed by an individual authorized by the bidder to execute the proposal, stating that the material in the EPD contains all of the information which was used to develop the bid, that the individual has personally examined the contents of the EPD container, and the documentation is correct and complete.

Failure to submit EPDs as herein required will be cause for rejection of the proposal.

The successful bidder agrees, as a condition of award of the Contract, that the EPD constitutes all the assumptions and information used in the preparation of its proposal, and that no other proposal preparation information shall be considered in evaluating disputes or claims.

- (c) *Storage.* The EPDs are, and shall remain, the property of the Contractor or subcontractors who prepared them and they are subject to use as provided herein. The EPDs shall be placed in escrow during the life of the Contract, in a banking institution or other bonded document storage facility suggested by the Engineer and acceptable to the Contractor. The cost of storage shall be paid by the Contractor.
- (d) *Examination.* The EPDs may be examined at any time deemed necessary by the Engineer or the Contractor, in conjunction with settling disputes, claims, or contract modification orders. When the Engineer or Contractor determine that it will be necessary to review an EPD, the EPD shall be reviewed by the Engineer and either the prime Contractor or the subcontractor that submitted the EPD. If the prime Contractor and the subcontractor agree, in writing, the prime Contractor may be present when the subcontractor's EPD is reviewed. Examination of the EPD is subject to the following conditions:

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- (1) The EPDs are proprietary and confidential and shall be treated as such.
 - (2) The Engineer and the Contractor shall each designate three representatives who are authorized to examine the EPDs. In addition, the Contractor shall designate one additional representative for every EPD submitted by subcontractors.
 - (3) Each party shall designate a representative to receive notice of examination of the EPD.
 - (4) Prior to examining the EPD 24 hours written notice shall be given to the other party, so that the examination can be witnessed by the other party. The notice shall include a list of the bid items or areas of work that will be examined.
 - (5) An authorized representative of the Engineer and the Contractor shall be present (1) to gain access to the EPD, and (2) during all examinations of the EPD. At no time will the EPD be allowed sole possession by either party.
 - (6) Following each examination, the EPD will be resealed and returned to the escrow institution, in the presence of an authorized representative of the Engineer and the Contractor.
- (e) *Subcontracting.* If the successful bidder's proposal is based upon subcontracting any part of the work, the successful bidder shall then require each subcontractor whose total subcontract price exceeds \$200,000 to provide a separate EPD to the Engineer, to be submitted at the same time as the bidder's EPD. The EPDs shall comply with the requirements of this subsection. A separate EPD affidavit, signed by the individual subcontractor, shall accompany the subcontractor's EPD.

If the Contractor wishes to subcontract any portion of the work after executing the Contract, or change subcontractors, the Engineer retains the right to require the subcontractor to submit an EPD in accordance with this subsection before the subcontract is approved.

- (f) *Return.* The EPDs will be returned to the Contractor and subcontractors after all claims, disputes, and litigation have been resolved, final payment on the Contract has been made and accepted, and the Contractor submits a signed statement that no further claims shall be submitted on any project to which the EPDs are applicable.

<p>ESCROW OF PROPOSAL DOCUMENTATION AFFIDAVIT</p> <p>THE UNDERSIGNED HEREBY CERTIFIES THAT THE ESCROW OF PROPOSAL DOCUMENTATION CONTAINED HEREIN CONTAINS ALL OF THE INFORMATION WHICH WAS USED TO DEVELOP THE PROPOSAL AND THAT I HAVE PERSONALLY EXAMINED THESE CONTENTS AND THAT THE DOCUMENTATION IS CORRECT AND COMPLETE IN ACCORDANCE WITH SUBSECTION 103.05. SUBMITTAL BY THE CONTRACTOR OF A CLAIM WHICH IS NOT CONSISTENT WITH THE CONTENTS OF THESE PROPOSAL PREPARATION DOCUMENTS SHALL RESULT IN DENIAL OF THE CLAIM.</p> <p>By: _____</p> <p>Title: _____</p> <p>Firm: _____</p> <p>Date of Submission: _____</p> <p>Project Number: _____</p>
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