

BUILDERS BID SERVICE OF UTAH, INC.

The nature of competitive bidding often involves substantial risk and on larger projects is usually a costly and time-consuming endeavor. We, therefore, affirm the right of a sub-contractor bidder to take every precaution to protect the confidentiality of his bid (which may contain creative and innovative ideas and methods peculiar only to his bid) by withholding its submission until the last possible moment. We likewise recognize the need of general contractors to receive sub-bids as early as possible to curtail potential errors caused by last minute bidding chaos. We also recognize the owner's right to minimize a project's cost while maximizing its quality.

In the interest of the general contractors, the various sub-contractors, the owners, and in conformity with known State and Federal laws and regulations governing such actions, the following Rules and Procedures to govern the Bid Service operation have been established.

RULES AND PROCEDURES

ARTICLE I

Declaration of Principles

(A) We believe that in principle, when a general contractor calls for bids from sub-contractors, that he should award the contract to the lowest responsible bidder.

(B) In principle, we are opposed to collusive bids, complimentary bids, and bids which are based directly or indirectly upon information as to the bid of another. Based on experience, we are convinced that (1) the lowest sub-bids are submitted under circumstances wherein a sub-bidder's first bid opportunity is his only bid opportunity, and that (2) sub-bidders invariably submit higher bids under circumstances wherein they anticipate possibly lowering their bids at a later time — an action which may never occur.

(C) In principle, we believe that the American bidding system will survive only if the responsible low bidder is given the contract. However,

We realize that cost factors incident to doing business with some sub-contractors must be considered. We, therefore, affirm the right of the general contractors, or awarding authority, to award to other than the low bidder, provided the original bid amounts and conditions are not changed in any way. We likewise affirm the right of sub-contractors to submit higher or lower bids to some general contractors than to others.

(D) We believe the Bid Service system is mutually advantageous to general contractors and sub-contractors alike. Use of the Bid Service, however, is not mandatory and it does not constitute the sole means whereby sub-contractors may offer or general contractors or awarding authorities may receive the bids of sub-contractors.

ARTICLE II

Purposes of the Bid Service

The Bid Service shall be a means to provide an orderly method by which sub-contractors can submit competitive bids to general contractors, wherein all bids thus submitted are prepared from and based on the plans and specifications of the project, possibly adjusted, however, to conform to generally accepted area practices.

The Bid Service will not solicit bidders but will rely on a free market to generate activity on any given project. General contractors, who as a matter of policy are unwilling to award sub-contracts when only one bid is tendered, should refuse to accept a bid if it is the only bid offered.

ARTICLE III
Definitions

The following definitions will apply to the terms used in these Rules and Procedures, and in the operation of the Bid Service.

(A) **AWARDING AUTHORITY** shall mean any person, firm or corporation or governmental agency soliciting bids from two or more general contractors, or from two or more sub-contractors bidding under classifications served by the Bid Service.

(B) **GENERAL CONTRACTOR** shall mean any person, firm or corporation who submits bids direct to an awarding authority, for a complete project as solicited by the said awarding.

(C) **SUB-CONTRACTOR** shall mean a contractor licensed by the State of Utah (the necessity of state licensing is waived on federal projects where state licensing is not applicable) to do business under classifications served by this Bid Service who submits bids to general contractors or awarding authorities and accepts sub-contracts from them.

(D) **GENERAL BID OPENING** shall mean the time and place designated for an opening of bids submitted by general contractors to the awarding authority.

(E) **PROJECT** shall mean a general building or engineering work for which the awarding authority has solicited bids from two or more general contractors or from two or more sub-contractors bidding under classifications served by the Bid Service and for which proper plans and specifications have been prepared, and a specific time and place for the opening of such bids has been designated. At the option of the Administrator, projects where only one general contractor or one awarding authority is involved may be carried if the other criteria of a qualified project are met.

(F) **USER** shall mean any sub-contractor who utilizes the facilities of the Bid Service for distributing his bid(s) to any general contractor(s) or awarding authorities through the Bid Service in connection with that project.

(G) **PARTICIPANT** shall mean any general contractor or awarding authority who uses the services and facilities of Builders Bid Service of Utah, Inc., in securing bids prepared by the Bid Service users on any building or engineering project in the State of Utah.

(H) **DEPOSITORY** shall mean BidSite©, Builders Bid Service of Utah's online depository system, the Bid Service itself or any other organization designated by the Administrator to receive the Bid Service users' sub-contract bids, and to distribute such bids to general contractors or awarding authorities to whom they are addressed.

ARTICLE IV
Eligibility for Using the Bid Service

Any person, firm or corporation operating as a sub-contractor under classifications served by the Bid Service and doing business in Utah, or planning to do business in Utah, may use the facilities of the Bid Service for submitting bids to general contractors or awarding authorities in the categories of work for which he is properly licensed by the State of Utah. (State licensing is not required for Federal projects.)

ARTICLE V
Administration

The Board of Trustees shall manage the affairs of the Bid Service. The Board shall employ an Administrator and such additional employees as may be necessary for the management and operation of the Service.

ARTICLE VI
Depositories

BidSite© will be the designated depository for all users and participants on the Bid Service projects. For contractors without access to the internet, the Bid Service will, with advance notice, utilize fax or email methods to receive or distribute bids.

ARTICLE VII
Obligations Incurred Through Use of the Service and Fees to Maintain the Service

(A) USE OF THE BID SERVICE. All Bid Service users and all participants will be governed by the rules herein set forth and recognize that they may be enjoined from contracting and/or working on projects offered through the Bid Service that they obtained in violation of the Bid Service Rules and Procedures.

(B) FEES — SUB-CONTRACTOR USERS. Any user submitting a bid through the depository on a particular project and obtaining or being offered a contract on said project, regardless as to which general was successful, shall be responsible for the Bid Service fee. Mechanical, electrical and mechanical insulation fees shall be equal to one-half of one percent (1/2 of 1%) of his contract amount up to a maximum fee of \$1,250.00. All other trades fees shall be equal to three-fourths of one percent (3/4 of 1%) with a maximum fee of \$900.00. Said fee shall be due and payable to Builders Bid Service of Utah, Inc. at the time of receipt of the first payment from the participant made to the user. The Bid Service fees may be decreased or increased from time to time by the Board of Trustees but may not be in excess of the maximum fee without amendment to these Rules and Procedures.

(C) FEES — CONTRACTOR PARTICIPANTS. Any participant who obtains bids on a project from the Bid Service and awards a sub-contract on that project to a sub-contractor not liable for payment under paragraph (B) above, or who performs the work himself, shall pay to the Bid Service a fee equal to that described in paragraph (B) and on the same payment schedule.

(D) BID REGISTRATION BY PARTICIPANTS. Participants are encouraged before obtaining bids from the Bid Service to register copies of any bids which they have received from sub-contractors not utilizing the Bid Service. Said action, while not mandatory, will give credibility to such bids and verify receipt of them prior to acquiring the depository bids.

(E) COLLECTION OF DELINQUENT FEES.

(1) If a Bid Service user fails to make payments as outlined in Article VII(B), the Administrator may request the participant to issue a check in the amount of the fee which is to be made in the joint names of the Bid Service and the delinquent user. Said check will be issued at least by the time of the next monthly payment from the participant.

(2) Any Bid Service user or participant who is sixty (60) days delinquent in the payment of any fee may be denied the use of the facilities and services of the Bid Service until such delinquent payment or payments has been made.

(3) In the event suit is filed to collect any fees payable to the Bid Service, the user or participant owing such fees shall pay all cost of suit and other expenses reasonably incurred in connection with such litigation, including reasonable attorneys' fees.

ARTICLE VIII
Project Requirements for Bid Service Distribution

Bids which may be handled under these Rules and Procedures shall include any proposal, tender or offer to contract the furnishing of materials and/or labor by the Bid Service users when all of the following conditions exist:

- (A) The awarding authority has formally or otherwise indicated a desire to receive competitive bids from one or more general contractors, or from two or more sub-contractors working under classifications served by the Service on a building or engineering project, and has specified a definite time and place for the opening of such bids.
- (B) Plans and specifications have been prepared and issued for the project.
- (C) The labor and/or materials to be furnished are estimated by the Administrator to be in excess of the minimum dollar amount or square foot area suggested by each of the various crafts carried by the Bid Service.
- (D) The Administrator has given notice that bids will be received and distributed on the particular project through the Bid Service. Said notice will define the time bids are due in the depository.

ARTICLE IX

Bidding Procedure

- (A) **DELIVERY AND DEPOSIT OF BIDS.** All bids submitted by users through the Bid Service shall be delivered before depository closing time, either in person or by an authorized representative, by fax or use of BidSite©.
- (B) **FORM OF BID.** In order to facilitate rapid comparison of bids received on each project and to provide a mutual basis of competitive bidding, all bids should be based upon bid forms prepared by the Bid Service, or a reasonable facsimile thereof. Bids should be complete, including all alternates requested and all addenda acknowledged. Space will be provided on the bid form template for any exclusions or exceptions proposed by the bidder. Bids not submitted upon the forms provided, or reasonable facsimiles thereof, may be rejected by the participants. Forms will be available at the Bid Service office for pick-up, by fax, or through BidSite© prior to depository closing time,
- (C) **SUBMISSION OF BIDS.** Users desiring to submit bids to any participant through BidSite© shall fill out the template for that project and highlight desired participant(s) to whom user desires to bid. If faxing bid(s) to the Bid Service, the user may send the depository a copy of the bid(s) together with a list of the names of those participants that user desires to bid. Immediately upon fax receipt of any user's bid by the Bid Service for a specified project, such bid shall be entered as a proxy bid on BidSite© by the Bid Service.
- (D) **AMENDMENT OF BIDS.** Any Bid Service user may amend, prior to depository closing time, any bids. All such modified or amended bids are due back in the depository by bid depository closing time.
- (E) **REVOCATION OF BIDS.** After depository closing time, bids deposited cannot be altered or changed. Any user's bid, however, may be withdrawn or revoked by the bidder submitting the bid until the time set for the general bid opening, providing the bidder or his authorized agent notifies each participant to whom the bid was submitted and the Bid Service that said bid is being withdrawn from competition. Withdrawals may not be selective — bids must be withdrawn from every participant to whom the bids were originally submitted. Any user who withdraws or revokes his bid after bid depository closing time shall not reinstate that bid or submit a changed or amended bid on that project to any participant.

The proper procedure for a withdrawal is as follows:

- (1) Notify the Bid Service in person or by telephone of the intent to withdraw,
- (2) Notify each participant telephonically or in person of the withdrawal. (Such notification shall be made to each and every participant who received the original bid. The consequence of failure to contact any given participant shall be the responsibility of the user.)
- (3) The Bid Service, after waiting a reasonable period of time, shall fax each participant and confirm that the Bid Service has received notice of the withdrawal from the withdrawing user. (Participants shall be reminded of this process in the pre-bidding information and sample bid form letters sent prior to the project bidding.) While the Bid Service shall make reasonable effort to send all necessary confirmation for any withdrawal, it cannot guarantee that such can be done before the hour of general bidding if the withdrawing user does not notify the Bid Service sufficiently early. Therefore, notice must be received by the Bid Service at least one hour prior to general bid opening for fax confirmations to be sent out.

(F) **USERS & PARTICIPANTS UNDERSTAND AND AGREE:**

(1) that any use of facsimile equipment or BidSite© for submitting bids or other information represents a less-than-satisfactory substitute for the traditional use of individual, original documents.

(2) that facsimile equipment and/or BidSite© may malfunction or fail to function and that information sent may not necessarily be received.

(3) that use of facsimile equipment BidSite© is voluntary and at the option of the sender.

(4) that although every precaution can and will be taken to protect faxed items, there is the possibility of loss of confidentiality for any document faxed.

(5) that all risks associated with the use of facsimile equipment and/or BidSite© is theirs and do waive and release the Bid Service, its officers, employees and agents from any and all claims of liability for any injury or damage associated with the use of the facsimile equipment and/or BidSite© unless such injury or damage is shown to be caused by the gross negligence or intentional misconduct of the Bid Service, its employees or agents.

(G) Submit all bids to BidSite© or by fax to the Bid Service prior to depository closing time.

**ARTICLE X
Delivery of Bids**

As specified in Article IX (A) hereof, the users' bids shall be made available to addressed participants as soon as practicable after the depository closing time for the project involved. The participant may (and should) refuse to accept any bid from users with whom he does not desire to contract.

**ARTICLE XI
Recordation of Bids**

Bids which are delivered to the depository shall not be made available to the Bid Service until after the time of the general bid opening. Immediately thereafter all bids shall be tabulated, recorded and filed in the office of the Bid Service, where they shall be available for inspection by all Bid Service users. Such bids shall be retained in the files of the Bid Service for a period of two years after the date of opening thereof. Abstracts shall be compiled of all bids delivered to participants stating the names of the bidders, the amount of each bid and all pertinent information concerning alternates, addenda, and etc., and shall be emailed or faxed to all users as promptly after the time of the general bid opening as is reasonably possible. Bids deposited by general contractors will be included in the bid abstract in their appropriate numerical order. No commentary as to their source will be indicated.

**ARTICLE XII
Bonding and Rejection of Bids**

In the event a user submitting a bid to a participant is requested by such participant to furnish a surety bond, conditioned on the faithful performance of the contract, and the payment of labor and materials, at the expense of such participant, refuses, or is unable for any reason to furnish such bond, the participant may, at his or its option, reject the bid of the user.

**ARTICLE XIII
Liability**

It is understood and agreed by all parties utilizing the facilities of the Bid Service or in any manner participating therein, that no officer, director, employee, agent, including the Bid Service itself, shall be responsible or liable in any manner for any loss or damage so long as such parties act in good faith in administering the Service. All claims against such officers, directors, employees, agents and the Bid Service of whatever nature are hereby waived by all

participants, and all parties using the Service, except for those claims which may arise as the result of willful acts in violation of these Rules and Procedures.

ARTICLE XIV Amendments

The Board of Directors shall have the authority to amend the Rules and Procedures of the Bid Service. Said amendment is to be by a majority vote of the Directors in attendance at a regularly called or special meeting, so long as there are sufficient members to constitute a quorum. A quorum is defined as a majority of Directors, present in person at any meeting.

BIDDING PROCEDURES

RESPONSIBILITY OF THE BID SERVICE OFFICE —

(A) Determine if an announced project is to be carried by the Service in accordance with Article VIII, Para. 1, 2, and 3 of the Rules and Procedures.

(B) If the project qualifies, prepare a registry for sub-contractors, general contractors and other interested parties. Also determine as early as possible the depository closing date and time.

(C) Announce any projects to be carried by the Bid Service on a weekly calendar sent out by fax or email and keep an updated version of said calendar on the depository website (www.buildersbidservice.com). This announcement will give the date and time of depository closing for each project along with individual trade information.

(D) Secure plans and specifications for the project, and prepare necessary bid forms.

(E) Mail sample copies of these bid forms to each participant listed, and to those making requests. This mailing will serve as a bid registry for participants. This information along with a list of intending users shall also be available to registered participants on BidSite©. (In addition, participants are urged to call the Bid Service office if they are bidding the announced project in order to assure registry.)

(F) Upload all necessary project information to BidSite© and send bid forms to users requesting such forms. (These requests along with user online log-in will serve as a bid registry and intent-to-bid for users.)

(G) Call registered participants prior to the bid date to confirm that they are bidding. This information will be available to users so their bid can be submitted accordingly.

(H) After the general contractor bid opening, compile an “abstract” for each trade covered by the Bid Service. Separately list all bid amounts submitted and subcontractor names.

(J) Upon contract award to successful participant, release the project on BidSite© allowing all depository users access to trade recap.

RESPONSIBILITY OF BID SERVICE USERS —

(A) Call the Bid Service office and request bid forms or log-in to BidSite© as soon as you decide to bid the project. This will serve as a registry of your intent to bid.

- (B) Prepare your bids carefully, and include all information called for on the bid form, including alternates and addenda.
- (C) Submit your bid in accordance with Article IX, Para. C of the Rules, for each participant with whom you wish to bid.
- (D) Make sure your bids are delivered to the depository before closing time, as late bids will not be accepted.
- (E) After depositing your bid, use the time provided in Article IX, Para. D of the Rules and Procedures to check for possible errors. After closing time, bids cannot be altered or changed in any way, but may be withdrawn, do so in accordance with the provisions of Article IX, Para. F. (F) Notify the Bid Service office promptly of any irregularities on any given project.
- (G) Notify the Bid Service office immediately of awards received on bids distributed by the Service, and pay fees promptly on all awarded contracts.
- (H) Users shall include in price(s) submitted only those items called for on the bid form (or shall submit a breakdown price for any item less than or more than that called for). Lumping or combining the bids of two or more crafts shall not be done unless each craft item so combined is also being carried by the Bid Service as a separate item. Combining bids in violation of this provision may be grounds for refusal to provide future bid forms to the violator. General contractors may consider combined bids in violation of this provision as non responsive and may reject them.
- (I) Bids submitted through the Bid Service shall be binding offers as submitted and shall not be conditioned on the necessity of accepting or rejecting provisions of any other document or offer.

RESPONSIBILITY OF PARTICIPANTS —

- (A) Call the Bid Service office as soon as you decide to bid a project on which you wish to receive bids from the depository.
- (B) Have a representative who is authorized to sign the “Receipt of Depository Bid”, sign the receipt, and pick up available bids at the depository as soon as practical after such bids are available, as provided in Article X, Para. A, of the Rules and Procedures. This availability time will be announced on each project.
- (C) Deposit, if desirable, at the time of picking up depository bids, a copy of any bids received from sub-contractors not bidding through the Bid Service. This registration process is not mandatory but will give credibility to such a bid(s) and assure any interested party that the bid(s) was timely received. Special forms, designed to minimize writing, are available from the Bid Service to facilitate this process.

RESPONSIBILITY OF THE DEPOSITORY —

- (A) Provide a depository where bids can be deposited prior to the designated time of availability of bids to participants.
- (B) Immediately after closing time, release bids to the various participants.
- (C) Have participants sign receipts for depository bids, and give to said participants all bids addressed to him in accordance with Bid Service Rules and Procedures.
- (D) After the time of award to successful participant, release bid recap to users.

(Rules & Procedures amended by order of the Board of Directors 4/2012)