



BUILDERS BID SERVICE OF UTAH

BRINGING BALANCE TO COMPETITIVE BIDDING

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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 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 authority.

(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 bids to general contractors or awarding authorities in connection with a building or engineering project in the State of Utah.

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

(H) DEPOSITORY shall mean a banking institution, telegraph company, accounting firm, law firm, the Bid Service itself, or any other organization designated by the Administrator to receive 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

Whenever a project is announced and it is determined that the Bid Service will carry bids for the project, the Administrator shall designate a depository (or depositories) so situated that it will likely meet the convenience of the greatest number of interested persons, firms and corporations.

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 (general contractors and awarding authorities) 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 obtaining a contract on a job bid through the Bid Service or being offered a contract which meets the conditions of the written bid which he submitted through the Bid Service, shall pay to the Service as a fee a sum equal to three-fourths of one percent (3/4 of 1%) of his contract amount, provided, however, that the Bid Service fee in no event shall be less than \$65.00 and shall not exceed \$750.00. Said fee shall be due and payable to the Builders Bid Service of Utah, Inc. at the time of receipt of the first payment from the general contractor or awarding authority 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 less than the minimum fee or in excess of the maximum fee without amendment to these Rules and Procedures (fees since June 1976 — \$65.00 min., \$750.00 max.).

(C) FEES — GENERAL CONTRACTOR PARTICIPANTS. Any participant (general contractor) 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. General contractors are encouraged to submit to the Bid Service, at the time they obtain bids from the Service, copies of any bids which they have received from sub-contractors not using the Bid Service. Said action, while not mandatory, will give credibility to such bids and verify receipt of them prior to obtaining 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 general contractor 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 general contractor.

(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.

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 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, and will also designate the location of the depositories to be used.

ARTICLE IX Bidding Procedure

(A) DELIVERY AND DEPOSIT OF BIDS. All users' bids submitted through the Bid Service shall be actually delivered to a designated depository(s) before depository closing time, either in person or by an authorized representative, by mail or by Western Union telegraphic wire.

(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 submitted 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 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 general contractors. Bid forms prepared by the Bid Service will be mailed direct to requesting users providing sufficient lead time is given. Additional forms will be available at the Bid Service office for pick-up by any qualified party prior to depository closing time.

(C) SUBMISSION OF BIDS. Sub-contractors desiring to submit bids to any person, general contractor or awarding authority through the Bid Service shall submit to the designated depository(s) for that project a separate and sealed bid addressed to each person, general contractor and/or others to whom the subcontractor desires to bid, and shall file with the depository in a separate and sealed envelope addressed to the Bid Service a copy of each such bid filed. However, the sub-contractor, instead of giving the depository copies of each bid (or bids), may give the depository addressed to the Bid Service, only one copy of the bid (or bids), together with a list of the names of those general contractors or persons to whom that bid (or bids) have been submitted.

Each of the sealed envelopes shall, on its outside cover or in a window, specify the project upon which the bid is made.

(D) SEALING OF BIDS. Immediately upon the receipt of any sub-contractor's bid by the depository for a specified project, such bid shall be (1) deposited in a bid depository box in which sealed bids can be deposited but not removed when locked, or (2) hand delivered to the depository employee in charge of the depository operation for sorting and/or delivery or issuing. The bid depository box, if used, shall be locked prior to the deposit of the first bid and shall remain locked until the time of distribution of the bids for that project. The bid depository box or boxes shall remain in the custody and control of the depository until bids deposited herein are sorted for delivery to the courier (in the case of multi-city

transfer) or to the general contractors or persons to whom the same are addressed as proved in Article X, or until after the time specified for the general bid opening. Any person or sub-contractor submitting a

bid, or any person or general contractor soliciting bids on any project carried by the Service may be present at and between the time specified in Sections (A) and (D) of this Article.

(E) AMENDMENT OF BIDS. Any Bid Service user may request, prior to depository closing time, the return of his previously deposited bids for the purpose of amending said bids. Any such amendment may be made by crossing out the original price(s) and inserting a new price(s) or by using completely new forms. All such modified or amended bids are due back in the depository by bid depository closing time.

(F) REVOCATION OF BIDS. After depository closing time, bids deposited cannot be altered or changed. Any subcontractor'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 general contractor, firm, person or corporation 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 general contractor to whom the bids were originally submitted. Any subcontractor (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 general contractor.

The proper procedure for a withdrawal is as follows:

(1) Notify the Bid Service in person, by fax or by telephone of the intent to withdraw, (Telephonic conversation will be recorded on a tape recorder by the Bid Service.)

(2) Notify each general contractor telephonically, by fax or in person of the withdrawal. (Such notification shall be made to each and every general contractor who received the original bid. The consequence of failure to contact any given general contractor shall be the responsibility of the subcontractor.)

(3) The Bid Service, after waiting a reasonable period of time, shall phone or fax each general and confirm that the Bid Service has received notice of the withdrawal from the withdrawing subcontractor. (These conversations, if telephonic, will also be recorded by the Bid Service to avoid any future question as to whether the withdrawal actually took place. General contractors shall be reminded of this process in the pre-bidding information and sample bid form letters sent prior to each bidding.) While the Bid Service shall make reasonable effort to make all necessary phone calls or send all faxes confirming any withdrawal, it cannot guarantee that such can be done before the hour of general bidding if the withdrawing subcontractor does not notify the Bid Service sufficiently early, or if the number of calls or faxes to be made is too numerous relative to the time available to do such.

(4) If deemed advisable by the Administrator, a telegram in the name of the withdrawing subcontractor may be sent to the low bidding general contractor (or any other general) confirming the withdrawal.

(G) USERS & PARTICIPANTS UNDERSTAND AND AGREE:

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

(2) that facsimile equipment may malfunction or fail to function and that faxes sent may not necessarily be received.

(3) that use of facsimile equipment 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 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 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.

(H) Place all bids in the special blue envelopes provided by the Bid Service and deliver them to any one of the depositories listed at the bottom of each bid form. (This includes the copy of the bid addressed to the Bid Service.)

**ARTICLE X
Delivery of Bids**

The sealed envelopes containing sub-contractors' bids addressed to general contractors and/or others shall be made available to the person or persons to whom addressed, or their authorized representative, as properly identified, by the operator of the designated depository as soon as practicable after the expiration of the time for depositing bids upon the project involved as specified in Article IX (A) hereof. The addressee or his authorized representative may (and should) refuse to accept an envelope containing the bid of any sub-contract bidder with whom he does not desire to contract.

**ARTICLE XI
Recordation of Bids**

Copies of bids which are delivered to the depository and addressed to the Bid service 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. Recapitulation of all bids delivered to general contractors or awarding authorities, stating the names of the bidders, the amount of each bid and all information concerning alternates, addenda and bond confirmation, shall be mailed or faxed to all bidders 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 recapitulation 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 sub-contract bidder submitting a bid to a general contractor or to an awarding authority is requested by such general contractor or awarding authority 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 general contractor or awarding authority, refuses, or is unable for any reason to furnish such bond, the general contractor or awarding authority may, at his or its option, reject the bid of the sub-contractor.

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 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 number and location of depositories to be used.

(C) Place an announcement in the Intermountain Contractor, and/or the A.G.C. Weekly News Bulletin, announcing the project will be carried by the Bid Service. This announcement will give the date and time of depository closing, and will also give the location of the depository or depositories in which bids are to be deposited.

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

(E) Mail sample copies of these bid forms to each general contractor listed, and to those making requests. This mailing will serve as a bid registry for general contractors. (In addition, general contractors are urged to call the Bid Service office if they are bidding the announced project in order to assure registry.)

(F) Mail or deliver bid forms and bidding envelopes as required to covered sub-contractors requesting such forms. (These requests will serve as a bid registry and intent-to-bid for covered sub-contractors.)

(G) Call registered general contractors prior to the bid date to confirm that they are bidding. This information will be available to covered sub-contractors so their bid can be submitted accordingly.

(H) Deliver to the depository before depository time:

- (1) A bid distribution sheet which indicates
 - (a) the names of general contractor bidders.
 - (b) the location of the depository where each general contractor's bids will be available.
- (2) A "Receipt for Depository Bids" form for each general contractor.
- (3) Extra bidding envelopes for emergency use.

(I) Pick up depository copies and undistributed general contractor copies of deposited sub-bids from the depository at the time of the general bid opening.

(J) Prepare a re-cap of bids of classifications covered by the Service to all sub-contractors who submitted bids. This re-cap shall give the amounts of the various bidder's bids including alternates, unit prices, etc., bonding confirmation and addenda acknowledgment information.

RESPONSIBILITY OF BID SERVICE USERS — Sub-contractors using Bid Service

(A) Call the Bid Service office and request bid forms and envelopes as soon as you decide to bid the project. This will assure your receiving the necessary bid forms on time, and 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) Prepare a copy of your bid in accordance with Article IX, Para. C of the Rules, for each general contractor with whom you wish to bid. Also prepare a copy of your bid (or bids if more than one price is being issued) on the bid form pre-addressed to the Bid Service. Place all bids in the special blue envelope provided by the Bid Service and deliver them to the depository.

(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 — General Contractors

(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 locked box or a separate, isolated and private room in which sub-contractors’ bids can be deposited prior to the designated time of availability of bids to general contractors.

(B) Immediately after closing time, open the bid box and sort the bids received for the various general contractors.

(C) Have general contractors sign receipts for depository bids, and give to said general contractors all bids addressed to him in accordance with Bid Service Rules and Procedures.

(D) After the time of general bid opening, deliver to the Bid Service copies of the Bids addressed to the Service, together with all undistributed bids addressed to general contractors.