

RULES AND REGULATIONS
GOVERNING THE OPERATION
OF THE
SMACNA UTAH BID DEPOSITORY

ARTICLE I

PURPOSES AND OBJECTIVE

SECTION 1 - To establish fair and equitable rules for the submission of bids and to promote fair and open competition among contractors in the Air Handling, Ventilating, and Sheet Metal Industry; to insure that all sheet metal work will be awarded in a fair and equitable manner and that all bidders will be treated equally and enjoy the benefits of open competition; to insure that all bids submitted are based upon the requirements of the bidding documents; to lessen the confusion which has existed in the submission of bids when no closing time is indicated.

SECTION 2 - The Board of Governors affirms the right of Sheet Metal Contractors to submit higher or lower bids to some mechanical or general contractors than to others. The Bid Depository Board of Governors is opposed to collusive bids, complimentary bids and bids which are based directly or indirectly upon information regarding the bid of another. The Bid Depository does not, in any way, constitute the sole means whereby sheet metal contractors may offer bids or mechanical or general contractors receive sheet metal contractors' bids. These Rules and Regulations apply only to those sheet metal, mechanical and general contractors who choose to use the services offered. Participants agree to be bound by the Rules and Regulations governing the operation of the SMACNA Utah Bid Depository.

ARTICLE II

DEFINITIONS

SECTION 1 - The following definitions will be applicable to the terms used in these Rules and Regulations, and in the operation of the Bid Depository:

- (a) **AWARDING AUTHORITY** - Shall mean any person, firm, corporation or governmental agency, general contractor or mechanical contractor soliciting bids from two or more sheet metal contractors with intent to offer contract therein.
- (b) **GENERAL CONTRACTOR** - Any person, firm or corporation who submits bids directly to an awarding authority for a complete project as solicited by awarding authority.
- (c) **GENERAL BID OPENING** -The time and place designated for the opening of bids submitted by general contractors to the awarding authority.
- (d) **PROJECT** - 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 Mechanical, Electrical or Sheet Metal Contractors and for which plans and specifications have been prepared and a specific time and place for the opening of such bids has been designated.
- (e) **USER** - Any Sheet Metal Contractor who utilizes the facilities of the bid service for distributing their bids to any awarding authority in connection with a building or engineering project.

- (f) **DEPOSITORY** - Any organization or location, including the bid service itself, designated by the administrator to receive bid depository users sub-contract bids, and to distribute such bids to mechanical contractors, general contractors or awarding authorities to whom they are addressed.

ARTICLE III

TERRITORY

SECTION 1 - This Bid Depository is available to all users performing work on projects within the State of Utah.

ARTICLE IV

ELIGIBILITY TO PARTICIPATE

SECTION 1 - Any person, firm or corporation properly licensed in the State of Utah, maintaining an established place of business and regularly engaged in the business of fabricating and installing Sheet Metal Work, Ventilating, Air Handling Systems and allied products related thereto, may use the facilities of the Bid Depository for submitting bids to Mechanical Contractors, General Contractors or Awarding Authorities, independent of and unrelated to such person, firm or corporation, upon agreeing in writing to abide by these Rules and Regulations and any amendments thereto and to pay the fees and/or dues as set by the Board of Governors.

ARTICLE V

ADMINISTRATION OF THE DEPOSITORY

SECTION 1 - The administrative duties connected with the operation of this Bid Depository shall be the responsibility of such person or persons as may from time to time be designated by the Board of Governors.

SECTION 2 - The formulation of all interpretive rules and regulations pertaining to the operation of this Bid Depository, not inconsistent with this document, shall be the responsibility of the Board of Governors.

SECTION 3 - BOARD OF GOVERNORS - The Board of Governors shall consist of five members appointed by the Board of Directors of SMACNA Utah. Governors will serve six year renewable terms. Three of the Governors will be on one six year cycle and the other two on another six year cycle. Directors must be employed by firms that utilize the services of the Bid Depository.

SECTION 4 - RESIGNATIONS - Any member of the Board of Governors may resign at any time upon ten (10) days written notice to the Board. In the event of a vacancy on the Board of Governors for any reason whatsoever, the Board of Directors of SMACNA Utah will appoint a contractor to fill the vacancy for the remainder of the term.

SECTION 5 - MEETINGS - The Board of Governors shall hold regular meetings at a time and place designated by the Chairman of the Board. In addition, the chairman may call special meetings when considered necessary by the Chairman or the Board. In the event a special meeting is called, a notice of one week will be required unless waived by all members of the Board.

ARTICLE VI

OFFICERS

SECTION 1 - The Board of Governors shall choose one of its members to act as Chairman and one member to act as Secretary.

- (a) It shall be the duty of the Chairman to preside at all meetings of the Board, to direct its activities, to investigate reports and complaints of violations of this Bid Depository, and to have general charge of the

supervision, administration and enforcement of its rules and regulations. The Chairman may delegate any such duties to other members of the Board.

- (b) It shall be the duty of the Secretary to keep records of all meetings, to notify all participants of all meetings and of any amendments or additions to these rules and regulations, and to make an annual report to the membership of SMACNA Utah.

ARTICLE VII

RULES OF OPERATION

SECTION 1 - DETERMINATION OF PROJECTS TO BE HANDLED BY THE DEPOSITORY - Eligible for handling by the Bid Depository will be all projects to be built within the State of Utah or projects to be built in other areas but where the Awarding Authority is residing within the State of Utah, or outside the State of Utah at the discretion of the Bid Depository Administrator, and on which it is estimated by the Depository Administrator that the Sheet Metal Work and equipment will total in excess of One Hundred Thousand Dollars (\$100,000). The Bid Depository Administrator will determine which of the projects described above in this section will be handled by the Bid Depository.

SECTION 2 - ANNOUNCEMENT OF JOBS TO BE CARRIED BY THE DEPOSITORY - It shall be the responsibility of each user to request or determine from the Bid Depository Administrator that a specific project will be handled.

SECTION 3 - LOCATIONS OF DEPOSITORIES AND CLOSING TIME FOR EACH PROJECT.

- (a) Bids will be received at the Bid Depository office in person, by fax or by other electronic means.
- (b) The closing time will be set by the Administrator at an hour most practical for the project and which will allow at least two hours prior to the closing time set for the Awarding Authority. The Administrator may determine a closing time the afternoon before the morning of the closing time set by the awarding authority.

SECTION 4 - PREPARATION OF BID FORMS - To facilitate the rapid comparison of bids on each project and provide a mutual basis of competitive bidding, all bids must be submitted on bid forms (or a reasonable facsimile thereof) prepared by the Bid Depository for such projects. Bid forms prepared by the Bid Depository will be furnished to all interested and eligible persons requesting them. Bids shall 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. Such exceptions or exclusions must be shown as alternates and must include the dollar value for such in writing in the appropriate space provided. Failure to include all information required by the bid form is a violation of these Rules and Regulations and could constitute cause for rejection of your bid by the awarding authority.

SECTION 5 - SUBMISSION OF BIDS - Any eligible sheet metal contractor desiring to submit a bid to an Awarding Authority may elect to do so through the facilities of the Bid Depository. It shall be considered a violation of these rules to alter or change any bid deposited after the closing time set for depositing bids on that project. Further, users shall have the option of bidding either through the Depository or directly to the Awarding Authorities, although it shall be deemed a violation of these rules to submit bids both through the Depository as well as outside the framework of the Depository on a given project. A user electing to bid through the Depository shall submit to the Bid Depository a copy of his bid(s) including instructions as to which persons and/or companies the sub-contractor intends to bid. Each bidding contractor shall be responsible for the delivery of his or her own bids to the Depository prior to the closing time set for each project.

SECTION 6 - OUTSIDE BIDS - Mechanical (or General) Contractors interested in utilizing the facilities of the Bid Depository must register all outside bids received or which they solicited directly with the depository prior to picking up bids from the Bid Depository. If an outside bid is the successful bid, then the mechanical (or general) contractor shall pay the bid depository fee.

SECTION 7 - WITHDRAWAL OR REVOCATION OF BIDS - After the depository closing time deposited bids cannot be altered or changed. However, any Sheet Metal Contractor's bid may be withdrawn or revoked by the bidder submitting the bid prior to the time set for the awarding authority opening. In the event a bid is withdrawn, the bidder shall be responsible to notify all persons, firms, or corporations with whom the bidder has bid, and the Bid Depository Administrator. Any user who withdraws or revokes their bid from the Depository after Depository closing time should not resubmit a bid in either in its original or altered form to any mechanical or general contractor.

SECTION 8 - DELIVERY OF BIDS – The bid(s) addressed to the Awarding Authority shall be made available for delivery to the person or persons to whom addressed as soon as practical after the expiration of the time for depositing bids upon the project involved in Section 3 of this Article. Awarding authorities may, however, refuse to accept any bid from a subcontractor with whom the addressee does not desire to contract, by notifying the Bid Depository before bids are to be sent by facsimile of subcontractors with whom he does not intend or desire to contract.

SECTION 9 - AMENDMENT OF BIDS - Any user may file an amendment to a previously deposited bid prior to the Depository closing time. Such amendment must be clearly marked as an "Amendment Bid" and identify the bid which it amends and must be submitted to the depository prior to Depository closing time either by the bidder or his authorized representative.

SECTION 10 - ELECTRONIC PROCESSING OF BIDS- Users and participants understand and agree:

- (a) that the use of electronic means (facsimile, internet, etc.) for submitting bids or other information represents a non-traditional substitute for the use of original documents.
- (b) that electronic means may error or fail to function and that messages sent may not actually be received.
- (c) that use of electronic means is voluntary and at the option of the sender.
- (d) that although every precaution will be taken to protect electronic documents, there is a possible loss of confidentiality for any given transaction.
- (e) that the user assumes all responsibility and risk associated with using electronic means and hereby waives and releases the SMACNA Utah Bid Depository, its members, directors, officers, employees and agents from any and all claims or liability for any injury or damage associated with the submission of the bid by way of electronic means excepting only those injuries or damages caused by the gross negligence or intentional misconduct of the SMACNA Utah Bid Depository, its employees and agents.

SECTION 11 - PUBLICATION OF BIDS - Within a reasonable time after the closing of the Bid Depository, the Administrator will compile a recap of the distributed bids. These bid results will be sent out to all users submitting bids on the project.

SECTION 12 - REJECTION OF BIDS - In the event the awarding authority receives a bid from a subcontractor who has indicated on the bid form an ability to furnish a payment and performance bond on the project, the awarding authority may require such bond at the awarding authority's expense. The awarding authority must assume the responsibility of verifying the capabilities of such contractor to furnish the bond if requested. Should it be determined that the subcontractor cannot, in fact, furnish such bond at the usual bond rate, the awarding authority may elect to reject such bid

SECTION 13 - LIABILITY - No officer, member, employee or agent of the Bid Depository or of SMACNA Utah or of the Utah Sheet Metal Contractor's Industry Fund, shall be personally liable for any action whatsoever in the operation of the Bid Depository so long as such parties act in good faith in administering the Depository.

ARTICLE VIII

VIOLATIONS AND PENALTIES

SECTION 1 - Any non-compliance with the provisions of these Rules and Regulations whether it be willful, negligent or accidental, shall be deemed a violation thereof.

SECTION 2 - It shall be the duty of the Chairman of the Board of Governors to notify said Board of any violations within forty-eight (48) hours after the discovery of such violations.

SECTION 3 - Should any user charge another user with a violation of these rules and regulations, such charges will be filed with the Chairman of the Board of Governors, in writing, stating the provision of the Rules and Regulations it is alleged has been violated and said Chairman shall investigate all such complaints and all other complaints filed pursuant to any provision of the rules and regulations whether such complaints be filed by a user, Awarding Authority, the Chairman, or other members of the Board of Governors. In no case, however, will such investigation be made prior to the closing time established for the job in question.

SECTION 4 - The Board of Governors shall not consider any complaint of an alleged violation of these rules unless such complaint has been filed with the Chairman of the Board of Governors in writing.

SECTION 5 - In any case where the Chairman, after preliminary investigation, shall determine that there is good cause to believe that a user has violated these rules and regulations, the Chairman shall report his determination to the Board of Governors.

SECTION 6 - The Board of Governors, after receiving such a report from its Chairman, may summon the participant accused of such violation before the Board, at which time the accused shall have an opportunity to be fully heard in respect to any charge or complaint against him. The purpose of the summons is to discover the facts and to educate the accused as to the harm caused when a common code of conduct is not maintained.

SECTION 7- In case of any member of the Board of Governors (or firm or corporation with which said member is associated) is involved in any charge pending before the Board, such member shall not participate in any proceedings before the Board with reference to any such charge, and his position on the Board may be temporarily filled in respect to all matters relating to any such charge by another participant of the System selected by the remaining member or members of the Board of Governors.

ARTICLE IX

FEES, DUES AND COLLECTION

SECTION 1 - Any user of the Depository shall pay a single fee upon obtaining a contract on a Depository job. Such fee will be the sum equal to three quarters of one percent (.0075) of the contract amount, with a minimum of three hundred dollars (\$300.00) and a maximum of nine hundred dollars (\$900.00). Said fee shall be due and payable to the Bid Depository by the tenth of the month following receipt of the first draw on the project.

The bid service fee may be decreased, but not increased by the Board of Governors from time to time without amendment to these Rules and Regulations.

SECTION 2 - COLLECTION OF DELINQUENT FEES - Any Bid Depository user or participant who is sixty (60) days past due in the payment of any fee, shall be denied the use of the facilities and services of the Bid Depository service until such delinquent payments have been made.

In the event suit is filed to collect any fees payable to the Bid Depository, or to enforce other provisions of these Rules and Regulations, the party owing such fees or otherwise liable to the Bid Depository shall pay all costs for suit and other expenses reasonably incurred.

ARTICLE X

AMENDMENTS

SECTION 1 - All amendments and additions to these Rules and Regulations shall be by majority vote of all users entitled to vote in the election of the Board of Governors as set forth in Section 3, Article V, pursuant to written notice of the meeting in which notice the proposed amendment shall be set forth. The amendment shall be considered at a regular or specially called meeting of the users pursuant to written notice upon request of at least two (2) members of the Board of Governors. The Board of Governors may elect to have the proposed amendment mailed to all users eligible to vote and a ballot returned indicating their preference on the amendments. The adoption of any amendments must be by majority vote of those ballots received prior to the deadline, allowing at least seven (7) days for the ballots to be returned. Nothing contained herein, however, shall affect the power of the Board of Governors to promulgate any interpretive regulations under Section 2, Article V.

ARTICLE XI

SAVINGS CLAUSE

SECTION 1 - If any provision of these Rules and Regulations shall be determined to be unlawful or unenforceable, such determination will not affect the binding nature or enforceability of the remaining provisions of such Rules and Regulations.