

## SAMPLE SPECIFICATION

### SECTION \_\_\_\_\_ SALES AND USE TAX SAVINGS

#### GENERAL DESCRIPTION

- A. **PURPOSE:** The Owner, \_\_\_\_\_, is a Tax Exempt Instrumentality of the State of Alabama. As such, it is authorized to and desires to enter into an Agency Agreement with the Contractor whereby the Owner will purchase all, or a portion of, the materials, supplies, equipment, and other items (hereinafter referred to as "materials") necessary for the performance of this Contract by the Contractor and its subcontractors and thereby save the amount of the sales and use tax thereon.
- B. **SALES AND USE TAXES ARE INCLUDED IN THE CONTRACT AMOUNT:** The Base Bid (and all Alternate Bids) submitted on the proposal form WILL INCLUDE the cost of all required taxes, including sales and use taxes; therefore, sales and use taxes will be included in the Contract amount.
- C. **ACTUAL SAVINGS WILL BE DEDUCTED FROM THE CONTRACT AMOUNT:** Prior to Final Payment the amount of sales and use taxes actually saved and 50 percent of any cash discounts earned pursuant to this Section shall be deducted from the Contract amount by change order.

#### GENERAL PROVISIONS

- A. **PRECEDENCE:** The provisions of this Section take precedence over the printed forms, "Instructions to Bidders", "General Conditions of the Contract", as modified and "Supplementary General Conditions". Unaltered provisions of these documents remain intact.
- B. **BID PROPOSALS:** The Contractor shall submit its proposal for Base Bid and proposals for each Alternate Bid, if any, with the inclusion of all required taxed including sales and use taxes, the same as if sales and use taxes were to be paid in the normal manner. The sales and use tax savings will be effected by change order prior to closeout of the Construction Contract.
- C. **NOTICE OF INTENT:** The Contractor, its subcontractors, sub-subcontractors, and all material suppliers are hereby made aware of the Owner's intent to reduce the Contract amount through the purchase of materials in the manner hereinafter described and the Contractor shall not arbitrarily withhold his consent to the arrangement.

- D. ADMINISTRATION:** Purchases and the resulting sales and use tax savings effected pursuant to this Section will be administered by the Contractor in accordance with the procedures set forth herein and utilizing the Purchase Order and other forms bound herein. Under the Agency Agreement, which is also bound herein, the Contractor will be appointed as agent of the Owner to purchase, for and in the name of the Owner, those materials that are necessary for the performance of the Work by the Contractor and its subcontractors. The Owner will render payment directly to vendors and materials suppliers.
- E. CONTRACTOR' ADMINISTRATIVE COSTS:** Any and all costs incurred by the Contractor's administration of purchases pursuant to the provisions of this Section shall be considered to be included in the Contract Amount. No additional costs shall be added to the Contract amount because of the service provided by the Contractor in the purchase of materials for this project in the name of the Owner.
- F. EFFECT OF PAYMENTS:** The Owner's payments directly to vendors and suppliers pursuant to this Section shall also constitute payments against this Construction Contract. In preparing monthly requests for payment, the Contractor will determine the value of stored materials in accordance with the procedures and forms contained herein. The calculation of the amount to be retained from the contractor's monthly payments will be the percentage of retainage specified in the General Conditions of the Contract applied against the sum of the value of completed work plus the value of stored materials.
- G. SUBCONTRACTORS AND SUPPLIERS:** The Contractor shall include provisions in all subcontractors and purchase orders requiring subcontractors and suppliers and their sub-subcontractors and sub-suppliers to also effect the sales and use tax savings procedures set forth therein, fully utilizing the applicable forms bound herein.
- H. FAILURE TO ADMINISTER:** In the event that Contractor, or any of its subcontractors or suppliers at any tier, arbitrarily pays for materials that should have been purchased and/or paid for by the owner under this Section, the Owner may, at its discretion, reduce the amount to be paid. A decision by the Contractor to waive these procedures in order to expedite delivery of materials in emergency or critical situations will not be deemed a failure to administer.
- I. DISCOUNTS:** In the event there is entitlement to a discount because of timely payments for purchases made pursuant to this Section, such discount shall be equally divided between the Contractor and the Owner.

- J. RESPONSIBILITY FOR MATERIALS:** Notwithstanding this special purchase arrangement, the Contractor shall be responsible for all materials purchased hereunder, the same as would have been the case if these tax savings procedures were not implemented. Such responsibility of the Contractor shall include, but not be limited to, selecting, describing, ordering, obtaining approvals, submitting samples, coordinating, processing, preparing shop drawings, expediting deliveries, receiving and unloading, inspecting, properly storing and protecting, insuring, and guaranteeing the materials. The Contractor shall accept and sign for the materials as the Owner's agent and forward the materials invoices to the Owner for payment in accordance with the procedures for Processing of Invoices.
- K. WARRANTIES:** The purchase of materials pursuant to this Section shall not relieve the Contractor of its obligation to provide warranties specified elsewhere in these project specifications in full force and effect, the same as if these procedures were not implemented. If the purchase of an item in accordance with these procedures will invalidate the warranty offered and/or required for that item, the Contractor shall notify the Architect and Owner of the condition prior to purchasing the item so that the Owner may evaluate its option to waive these procedures for that purchase. If materials purchased pursuant to this Section fail to meet the requirements of the plans and specifications, the Contractor, as agent of the Owner or its assigns, will be responsible to enforce and pursue, at Contractor's cost and expense, including attorneys fees, all warranty actions against vendors or others responsible for the furnishing of such defective or non-complying materials to Owner.

(OPTIONAL PROVISION)

- L. MINIMUM, APPLICABLE VALUE:** The provisions of this Section shall not apply to purchases of singular items of less than \$\_\_\_\_\_ in value, but shall apply to purchases of items of any value when purchased under one purchase order the total of which exceeds \$\_\_\_\_\_.

**AGENCY AGREEMENT**

To establish the agency relationship between the Contractor and Owner for the purposes of this Section, an Agency Agreement will be executed by the two parties immediately after the Contract Bonds and Contract have been properly executed and approved. The form of Agency Agreement to be utilized is bound at the end of this Section.

## PROCEDURES

### A. PURCHASE ORDERS

All purchases of materials must be made utilizing the Purchase Order form bound at the end of this Section.

*Notes to writer of specifications:*

1. *Typically the various entities of the State government utilize a purchase order form as a part of their standard procedures. Such standard forms may have to be modified to include the following:*
  - a. *The form must show that the Contractor is executing the order as the Owner's agent.*
  - b. *The form must instruct the vendor to ship the materials to the Contractor as agent of the Owner.*
  - c. *The form must show that the purchase is tax exempt.*
  - d. *The form should instruct the vendor to:*
    - (1) *Send invoices and statements to the Contractor as the Owner's Agent.*
    - (2) *Mark all invoices and correspondence with the Purchase Order number.*
    - (3) *Prepay and bill for transportation charges on all F.O.B. point of shipment orders.*
    - (4) *Render separate invoices for each Purchase Order.*
    - (5) *Indicate Federal Employer Identification Number (FEN) on all invoices.*
2. *The Owner's accounting department should be consulted to determine when and how many copies of the purchase orders are to be furnished to them.*

### B. PROCESSING OF INVOICES

The Owner will render payments to Vendors upon receipt of invoices approved by the Contractor and transmitted to the Owner on a monthly basis as prescribed herein.

1. Invoices from each vendor must be tabulated on and attached to a MATERIAL INVOICE TRANSMITTAL, a copy of which is included at the end of this Section. The original and \_\_\_\_\_ copies of the invoice are required. The set of original invoices are to be attached to the original MATERIAL INVOICE TRANSMITTAL and each set of invoice copies is to be attached to a copy of the MATERIAL INVOICE TRANSMITTAL. By signing the certification at the bottom of the MATERIAL INVOICE TRANSMITTAL the Contractor approves the invoices for payment, certifies that the materials or equipment covered by the invoices are to be

incorporated into this project, and certifies that the invoices are true, correct, and unpaid.

2. The MATERIAL INVOICE SUMMARY included at the end of this Section is to be used for summarizing and forwarding the MATERIAL INVOICE TRANSMITTALS with invoices to the Owner. The total amounts from each TRANSMITTAL and the resulting sales and use tax savings are to be tabulated on the SUMMARY. Each new SUMMARY is to be submitted to the Owner with the contractor's monthly APPLICATION AND CERTIFICATE FOR PAYMENT.

***Note to writer of specifications:***

*The owner should be consulted to determine how many copies of invoices will be required and to determine whether invoices (with Transmittal and Summary) can be submitted more frequently than once a month as indicated above.*

**C. MONTHLY ACCOUNTING**

The Contractor's monthly and final APPLICATION AND CERTIFICATE FOR PAYMENT shall account for the accumulated credit due the Owner for: (1) its portion of earned Cash Discounts, (2) payments for materials, and (3) actual sales and use tax savings realized from the Owner's payments for materials.