

# **JOB ORDER CONTRACTING – NYSDOT/OSC AGREEMENT SUMMARY**

## **OBJECTIVES FOR THE USE OF JOB ORDER CONTRACTING**

The main objective for a Job Order Contract (JOC) is to enable the New York State Department of Transportation (NYSDOT) to augment maintenance activities performed by State forces. A JOC provides a flexible, non-specified quantity, non-specified location(s) contract, suitable for identified maintenance needs within the scope of the contract. In reference to the non-specified quantity, non-specified location aspect, the Department has identified some projects it would like to perform with this contract before the contract is advertised, but this information is not shared with the Contractor at the time of the letting. Additional projects are identified as possible JOC projects during the course of the contract. The Department is responsible for maintaining an ever expanding transportation system while undergoing significant reductions in the resources available to perform cyclical, preventive, element specific replacement in kind and unscheduled maintenance activities. Additional resources that can be called upon to perform the necessary maintenance activities identified below, in a timely manner, are necessary to maintain the existing system at an acceptable level of service to the traveling public. A JOC allows NYSDOT maintenance managers the flexibility to deploy both State and contracted resources to perform a variety of maintenance activities. Currently, the Federal and State Job Order Contracting contracts are a pilot program for the NYSDOT. The pilot program is scheduled to end on 12/3/2011. Any decision by the OSC to agree to its permanency will be made only upon receipt, analysis, and acceptance, by OSC, of a report, to be produced by the DOT, in concurrence with the Federal report that demonstrates if the anticipated benefits of the JOC Pilot Program have been achieved.

## **DESIGN**

JOC types (scopes of work) are limited to Bridge, Highway, Overhead Sign Structures, Culverts, and Combined. They will be used when other existing DOT contracts are not practical or cost beneficial. No additional types will be allowed without prior approval from OSC.

- Highway Maintenance – work on highways or appurtenances (ex. paving, drainage, guide rail, signs). Highway maintenance work includes maintaining the traveled lanes, shoulders, drainage structures and drainage surfaces, guiderail, safety hardware (for example signs or impact attenuators) and other appurtenances within the ROW.
- Bridge Maintenance – work on bridges (ex. maintenance, cleaning, repair, element specific replacement in kind). Maintenance work is defined as actions that deter or correct deterioration of a bridge asset to extend its useful (service) life; it does not entail structural or operational improvement of an existing bridge beyond its originally designed strength or capacity. Element specific replacement refers to, for example, replacement of all of the bridge joints on a bridge or bridges. A JOC will not be used to construct complete replacements of existing structures.
- Overhead Sign Structures – work on sign structures over highways. The work will be performed to address structural condition flags which have been issued on these types of structures based on the Department’s inspection program.
- Culvert Maintenance – work on culverts under or along a highway. A culvert is a structure with a span up to 20 feet (over 20 feet is considered a bridge).

- Combined –includes any combination of the above. (This type will not be allowed if it includes any of the types above that are included in a current JOC contract for the county/region unless prior approval is granted by OSC).

The DOT will limit the JOC's to one per county or Region per type. The smallest jurisdictional (project limits) area of a JOC contract will be the County level. This will allow the Regions to meet the needs of the infrastructure without overlapping project limits. For replacement (new contract with the same scope) JOCs, there may be some overlap during the letting and award process, but new job orders cannot be issued through the current JOC once the replacement JOC has been awarded.

**Initial Project Proposal (IPP)** Include the Main Office – Office of Transportation Maintenance on all correspondence relating to JOC projects. Of particular importance is the Regional IPP/FDR Approval memo which the designer sends out once Regional approval of the IPP/FDR (Design Approval) has been received. The Office of Transportation Maintenance thereupon will notify the consultant to begin to prepare the Construction Task Catalog (CTC).

The Construction Task Catalog is developed by and provided to the NYSDOT by The Gordian Group. The Construction Task Catalog (CTC) is a location specific document which contains a series of work items with preset unit prices. Each task in the CTC contains a description, unit of measurement, and a unit price. Each unit price contains locally developed direct costs for material, labor, and equipment. The CTC follows the 16 Divisions of Construction format of Construction Specifications Institute (CSI). The CSI is a nationally recognized organization that maintains and advances the standardization of construction language as pertains to building specifications. The CTC Items have also been modified to reflect heavy/highway work such as the NYSDOT performs. The prices in the CTC should be used as the basis for the contractor to bid contract adjustment factors.

As mentioned, upon receipt of an approved IPP/FDR from the Region, the Main Office, Office of Transportation Maintenance, will notify the Job Order Contracting consultant The Gordian Group regarding the proposed contract. The consultant will be informed of the Region, the PIN number, the proposed scoping and the PS&E (Plans, Specifications, and Estimate) due date. Each contract has a unique Construction Task Catalog (CTC). The CTC is prepared by the Gordian Group in the time between notification by the Department (receipt of the IPP/FDR) and the PS&E due date. Draft copies of the CTC are forwarded to the Region for review prior to final publication. The CTC is applicable for the life of the contract.

## **FUNDING AND DURATION**

### **STATE FUNDED JOCS**

All types of JOC contracts are eligible for State funds.

The base term is one year, with the completion date being one year (365 days) from the date the contract is awarded (approved) by the New York State Office of the State Comptroller (NYS OSC). The contract proposal will be published to indicate this one year completion date. There are 3 separate one year bilateral (mutually agreed upon) option periods, called terms. Both the NYSDOT and the Contractor must mutually agree to extend the contract into the next term. An additional term cannot be entered into until the current term has completed its complete 12 month lifespan. The initial contract value of all state-funded JOCs is capped at \$1.2 Million. There are 3 separate bilateral (mutually agreed upon) increases in funding, called fund replenishment. Both the NYSDOT and the Contractor must mutually agree to extend the contract by fund replenishment. Again, no contract replenishment will be approved until the current contract term has exhausted its complete 12 month lifespan.

The contract cannot extend beyond 4 years from the date of award, or four times (4 x) the original contract value (\$4.8 Million), whichever comes first.

### **FEDERAL AID BRIDGE JOCS, 3 YEAR PILOT PROGRAM**

NYSDOT was given approval from the FHWA to use Federal Aid on Bridge JOCs on December 21, 2007 (12/21/07) under Special Experimental Project 14 (SEP 14), Innovative Contracting Practices pilot. The original approval was modified in February, 2009. The duration of the SEP 14 pilot project is 3 years, beginning on 12/4/2008 (the letting date of the first FA Bridge JOC) and ending on 12/4/2011. As of April 2010 the Department has awarded four (4) ARRA funded Bridge JOC contracts. The Department has elected not to use ARRA funding for JOCs in the future.

The initial contract value of Federal Aid Bridge JOCs is capped at \$1 Million for one year in Regions 1, 2, 3, 4, 5, 6, 7, and 9 (upstate Regions). Total contract value can be \$2 Million in these upstate Regions (two years). The initial contract value of Federal Aid Bridge JOCs is capped at \$2.5 Million for one year in Regions 8, 10, and 11 (Metro Regions), or a total value of \$5 Million after two years.

Federally funded (FA) JOC contracts can be extended once during this pilot period. If the initial contract dollar value is exhausted prior to the end of the first term (first 12 month contract period), additional funds will not be approved until the 12 month term is expired.

## LETTING

**Naming Convention:** It is very important to use consistent naming with all JOC contracts across the Department. All Job Order Contracts will use an appropriate contract description from the list below from the IPP to the final acceptance of construction:

- Job Order Contract: Bridge Maintenance
- Job Order Contract: Highway Maintenance
- Job Order Contract: Overhead Sign Structures
- Job Order Contract: Culvert Maintenance
- Job Order Contract: Combined\*.

\*As noted earlier, Combined will not be allowed if an existing type mentioned above is an already approved JOC contract for the existing county/region unless prior approval is granted by OSC.

### Typical Design Milestones

Bid Opening date	PS&E Deadline			Special Spec Deadline			Follow up ROW Cert. deadline			Newspaper Ad Published			Amendment Deadline
	6 Wk Ad	5 Wk Ad	4 Wk Ad	6 Wk Ad	5 Wk Ad	4 Wk Ad	6 Wk Ad	5 Wk Ad	4 Wk Ad	6 Wk Ad	5 Wk Ad	4 Wk Ad	
April 1, 2010	Dec 17	Dec 24	Dec 31	Nov 19	Nov 25	Dec 3	Jan 27	Feb 3	Feb 10	Feb 17	Feb 24	Mar 3	March 3, 2010
Letting Date	15 Wks before letting	14 Wks before letting	13 Wks before letting	19 Wks before letting	18 Wks before letting	17 Wks before letting	9 Wks before letting	8 Wks before letting	7 Wks before letting	6 Wks before letting	5 Wks before letting	4 Wks before letting	4 Wks before letting

**Advertisement:** Design Quality Assurance Bureau (DQAB), the Project Letting and Management Bureau, and the Contracts Management Bureau work together to ensure that the project is properly advertised. As applicable, Project Letting and Management Bureau either authorizes advertisement or obtains FHWA's authorization to advertise. The naming (title) used in the advertisement shall be in accordance with the naming convention.

**Pre-Bid Meeting:** A pre-bid meeting is typically held at the Regional Office, 3 to 4 weeks prior to the letting date. The meeting is held to provide the prospective bidders with an overview of how a JOC contract with the Department works, as it is different from traditional construction contracts. The overview is provided by the Departments JOC consultant, with assistance from appropriate Department staff, including Regional and Main Office personnel.

**Preconstruction Meeting:** The Contractor, EIC, maintenance staff, and other interested parties involved in the contract meet to discuss the contract scope, work plan and schedule and review administrative procedures necessary to begin work. Potential job orders should be discussed and at least one job scope field review should be scheduled.

## **CONTRACT ADMINISTRATION**

All recordkeeping will be maintained in accordance with Manual for Uniform Recordkeeping (MURK), Part 1A *Contract Administration Manual* (CAM). In addition to the typical recordkeeping performed using CEES or Site Manager, contract management also includes using the consultant's web-based contract management program "PROGEN". An electronic version of the "PROGEN User's Guide" is available on line at [www.egordian.com](http://www.egordian.com). Typically, the proposed candidates (work type and locations) are selected by Regional Maintenance staff, while the field construction is monitored by an Engineer in Charge (EIC) from the Regional Construction Group. Therefore, during the construction phase, a strong working relationship between the Regional DOT Construction group and the Regional DOT Maintenance group is crucial to the success of the contract.

### **JOB ORDERS**

All Job Orders are to be consistent with the scope of work listed in the proposal.

Individual job orders are capped at \$500,000. Approval to exceed this threshold must be obtained from the Office of the State Comptroller prior to ordering the work. Notice of this provision will be included in the contract proposal.

Individual Job Orders in excess of \$150,000 where the aggregate Non Pre-priced task value is in excess of 10% of the Job Order value, the Non pre-priced task will require the prior approval of the OSC. All requests for this approval will be through the Main Office -Office of Transportation Maintenance, JOC Program Manager.

All job orders are to be reviewed for compliance to NEPA, SEPA, ROW, Railroad FA, Traffic control, permit requirements, etc.

Job Orders should not be issued if the Contractor cannot complete the work, including allowances for weather delays, by the contract completion date.

Field personnel managing Job Order Contracts will work out of State owned facilities whenever possible. However, if space in a State owned facility is not available, or if a majority of the proposed work is in a remote area, an Engineers Field Office may be necessary. If an Engineers Field Office is required for the contract, payment will be made as follows:

- For an anticipated construction inspection staff of 1 to 3 employees, the office furnished shall meet the requirements of Standard Specification Item 637.11, Engineers Field Office- Type 1.
- An Item is contained in the Construction Task Catalog to mirror this DOT Standard Specification.
- Basic office supplies such as printer paper, pens, envelopes, etc. are to be supplied by the Regional office.
- Cell phones and other personal communication devices are to be supplied by the Regional office.

## **ORDERS-ON-CONTRACT**

### **Time Extensions.**

Requests for a contract time extension must be submitted in an OOC. If the contract is to be extended for a new term, the EIC or Project Manager must include Form CONR 250 Application for Extension of Completion Date signed by the Contractor in the OOC, in accordance with the Contract Administration Manual (CAM). This OOC will be submitted to the OSC up to 30 days prior to the current completion date.

### **Fund Replenishment**

Fund replenishment is done through an Order on Contract (OOC). The value of the OOC is limited to the original contract amount. Increasing the dollar value of the contract will be approved only after the current term has completed, i.e. you must complete the current 12 month period of the existing term before replenishing funds for the contract.

In order to achieve a smooth transition from one term to the next and not experience any gaps in the time available to perform work, the Department will submit OOC's to the OSC up to 30 days prior to the current completion date. This will allow the OSC sufficient time to review, and approve, the OOC and prevent any lost time toward actual field construction. This approval is based on the OSC receiving a complete OOC package.

Both contract time extensions and fund replenishments will be performed via an OOC. If both a time extension and fund replenishment are requested simultaneously, the Department will submit both requests to the OSC at the same time (OSC cannot approve fund replenishment without a time extension).

### **Bid Factor Adjustment**

Allowable adjustments made to the Contractor's bid adjustment factors will be made through an OOC. These adjustments will be made at the written request of the Contractor, not more frequently than annually, on the contracts anniversary date. Adjustments will be calculated as stated in the Special Note, Job Order Contract, found in the contract proposal.

### **Job Order Tracking Report**

All OOCs shall include a list of all Job Orders which have: (1) been completed, (2) are in progress, and (3) are planned to be performed during the extended period (this will not be an all inclusive or complete list). *An easy way to document this information is by including a copy of the "Job Order Tracking by Status" report from PROGEN, or by including a copy of the "Job Order Tracking by Region" report from PROGEN. This report should be exported into Excel, and the other contracts should be deleted from the report.*

## **DEVELOPMENT OF A JOB ORDER:**

Work needs are typically identified by Regional Maintenance staff. The EIC, in conjunction with the appropriate NYSDOT Maintenance staff, will investigate the work to be accomplished, the availability of the use of existing DOT non JOC related contracts (where practical or cost beneficial), the availability of information and documents concerning the site and the existing conditions (as built drawings), the availability of information and documents concerning the proposed work (drawings, sketches, etc...), and will review items to be discussed at the Joint Scope Meeting. Following this preliminary investigation, the EIC and the appropriate maintenance personnel will prepare a preliminary Scope of Work. The EIC will then schedule a Joint Scope Meeting with the Contractor and all other stakeholders. The EIC will send a Notice of Joint Scope Meeting to all invitees.

**A. The Joint Scope Meeting** is held on site of the proposed work. The EIC and the appropriate DOT Maintenance staff will explain the preliminary Scope of Work to the Contractor. During the Joint Scope Meeting, the following, at minimum, should be discussed: the overall intent of the work and the specific tasks to be performed; a duration for the construction in days and a possible start date; the hours of the day during which the work can be performed; access to the site and requirements for work zone traffic control; the presence or absence of any hazardous materials, and testing required for such hazardous materials; sketches, drawings, catalog cuts, shop drawings, technical data on materials, material samples, or other submittals which may be required; necessity of permits or special inspections; requirements for as- built drawings; whether liquidated damages will apply, and the due date for the Proposal. During the Joint Scope Meeting, NYSDOT personnel and the Contractor should take any necessary measurements of key project conditions. This will assist in developing and approving the Contractor's Price Proposal.

**B. Detailed Scope of Work.** Following the Joint Scope Meeting, the EIC and the NYSDOT Maintenance staff will prepare the Detailed Scope of Work. The Detailed Scope of Work may reference drawings, sketches, Standard Specifications, Standard Sheets, or other documents, and should also include any work zone traffic control requirements and/or reference to a standard MUTCD plan. The EIC will then forward the Detailed Scope of Work to the Contractor along with a **Request for Proposal (RFP)** which will set forth the date on which the Proposal is due and indicates whether Liquidated damages will apply.

**C. Contractor's Proposal.** Following the Joint Scope Meeting, and a Request for Proposal from the owner (NYSDOT), the Contractor will begin putting together a cost proposal for performing the work. The Contractor will use items and prices found in the Construction Task Catalog. Design, estimating, and coordination work in developing the project (developing the cost proposal for the Job Order) will be performed using the Departments JOC consultant's web-based software called "PROGEN". The consultant will provide assistance for both the NYSDOT and the Contractor in learning and familiarizing themselves with this program throughout the duration of the contract.

The Contractor's Proposal Package should include a Price Proposal (with cover sheet and back-up for all Non Pre-priced tasks) and a construction schedule expressed in number of days, not dates. The Contractor shall prepare, and be ready to provide to the NYSDOT, all back-up calculations, diagrams, etc. used to determine quantities included in the Price Proposal.

When a work task has been identified but a corresponding item is not available in the Construction Task Catalog, the proposed work will be developed using a Non Pre-priced task. The documentation supporting each Non Pre-priced task should include a cover sheet setting forth in detail the calculation appearing in the Special Note in the contract proposal and copies of all material and subcontractor quotes.

**D. Owners proposal review.** When the Contractor has developed an acceptable Proposal package, the Contractor will submit the Proposal Package to the EIC for review. The EIC and the appropriate NYSDOT Maintenance staff will review the Proposal, keeping in mind the following steps in the review process: review the Detailed Scope of Work and Standard Specifications, drawings, or other materials referenced therein; review the Contractor's proposed schedule; determine whether all necessary documents and information have been submitted; request any information which is missing. For each Pre-priced task (for which there is an Item in the CTC) the reviewer should consider the following when reviewing: is this task required?; is the task used the most appropriate task in the CTC for the work specified?; is the task part of another task?; are the quantity(ies) correct? (ask for calculations, conversions, sketches, etc... to clarify); has the Contractor used the correct Adjustment Factor in calculating the proposal?

For each Non Pre-priced task included in the Contractor's proposal, the reviewer should consider the following during review: is this task required? should the Contractor have used a Pre-priced task from the CTC? If not, then is there any task in the CTC that covers a portion of this item of work?; is the required back up provided, including the calculation from the Special Note and three independent quotes for material and subcontractor prices (which should be verified as independent); and has the Contractor used an Adjustment Factor of 1.0 for this Non Pre-priced task calculation.

Following this initial review of the Contractor's Proposal, the EIC should transmit comments to the Contractor with an explanation. The reviewer should not approve a task or quantity if he/she is not sure it is appropriate. All quantities should be verified in the field or from approved drawings.

**E. Proposal Review Meeting.** If the NYSDOT and the Contractor feel a Proposal Review Meeting is necessary, the DOT should follow these guidelines: before the meeting, the DOT should document clearly and specifically changes which have been made/suggested to the Contractor's original Proposal. The DOT should be knowledgeable of and ready to explain all requested changes to the Proposal. Also, prior to the meeting the EIC should forward a marked up copy of the Contractor's Proposal to the Contractor. This will make the Contractor aware of the proposed changes. During the proposal Review meeting, the DOT should be prepared to make changes to the Price Proposal and/or the Detailed Scope of Work. The Contractor should have his supporting documentation available and be prepared to explain the tasks he selected and calculations performed. If an agreement on specific tasks or quantities cannot be reached, a second site visit with all interested parties is suggested.

**F. Issue Job Order:** When the NYSDOT has reviewed the Contractor's Proposal and has determined that it is fair and reasonable compensation for the proposed work, then the DOT will issue a Job Order. Once an acceptable Proposal is received and accepted by the NYSDOT, the EIC, or the DOT's Project Manager, will approve the Price Proposal in PROGEN, schedule the start date for construction, enter the Job Order Issued date in PROGEN, and print out the approved Job Order. The EIC, or DOT's Project Manager, will obtain the required signatures for the Job Order and will forward a signed copy of the Job Order to the Contractor. The EIC, or Project Manager, should maintain at a minimum the following information in the files for each approved Job Order: copies of the Notice of Joint Scope Meeting, Detailed Scope of Work, Request for Proposal, Price Proposal with all back up, and the approved Job Order. As work progresses, it is crucial that the EIC or project Manager update the tracking dates in PROGEN with accurate information (construction start date, construction completion date, etc.)

No Job Orders will be issued if an OOC for additional funding is required and not approved. No Job Orders will be issued if a time extension is required to reasonably complete the work.

**G. Perform Work:** All work performed via Job Orders which are issued on a Job Order Contract shall conform to all NYSDOT Standard Specifications, Standard Sheets, etc. or as per specific information contained in the approved Job Order.

**H. Supplemental Job Orders.** If, after the Job Order is issued, the EIC or Project Manager determines that additional, extra, or changed work is or has been required in connection with the construction of the approved Job Order, a supplemental Job Order will be developed. This supplemental can be either a positive quantity or a negative quantity depending on the situation involved (extra work performed or work in the original approved Job Order which was not performed). The development and approval of the Supplemental Job Order will follow the same guidelines as used when developing the original Job Order (Detailed Scope of Work, submittal and review of Proposals, issuing a Supplemental Job Order, etc...). The original Job Order and Detailed Scope of Work, and all related documentation, shall not be modified and shall be retained in its original condition as part of the permanent Job Order File records.

**I. Payments.** Payments to the Contractor will be made at the completion of the work identified in each Job Order. Semi monthly or monthly payments will generally be made to the contractor in accordance with the provisions of Section 109-06 of the NYSDOT Standard Specifications.

## GLOSSARY

The following are definitions of key words, or phrases, used throughout the JOC process:

**Adjustment Factor:** is the competitively bid adjustment to the pre-set Unit Prices appearing in the Construction Task Catalog. There are two adjustment factors for each contract. One factor is to be applied to tasks performed during Normal Working Hours. The second adjustment factor is to be applied to tasks performed during Other Than Normal Working Hours (see Special Specification 21636.01 and 21636.02 for more info regarding Normal Working Hours and Other Than Normal Working Hours).

**Construction Task Catalog:** the unit price book containing all Pre-priced Tasks.

**Detailed Scope of Work:** is a document prepared by the EIC after the Joint Scope Meeting describing in detail the work the Contractor will perform in connection with a particular Job Order.

**Job Order:** is a document prepared by the EIC and issued to the Contractor authorizing the Contractor to proceed with the Detailed Scope of Work and setting forth the Job Order Price and the Job Order Completion Time.

**Job Order Price:** is the lump sum price appearing on the Job Order to be paid to the Contractor for completing the Detailed Scope of Work.

**Job Order Completion Time:** is the period of time, expressed in calendar days, set forth in the Job Order within which the Contractor must complete the Detailed Scope of Work.

**Job Order File:** is a file containing the documents generated as part of the Job Order development process.

**Joint Scope Meeting:** is a meeting held at the site of the proposed work during which the EIC, Contractor, and appropriate others review the proposed work and any other issues relating to the Job Order.

**Non Pre-priced Task:** is a construction task for which a pre-set price is not contained in the Construction Task Catalog.

**Notice of Joint Scope Meeting:** is a document prepared by the EIC and sent to the individuals invited to the Joint Scope Meeting.

**Pre-priced Task:** is a construction task for which a pre-set price is contained in the Construction Task Catalog.

**Price Proposal:** is a PROGEN generated document prepared by the Contractor containing the unit priced tasks required to accomplish the Detailed Scope of Work multiplied by the quantities multiplied by the appropriate Adjustment Factor.

**PROGEN:** is the internet based software developed by the Gordian Group and used by the Department to manage the development of Job Orders and to assist in the administration of the Job Order Contracts.

**Project:** the services and construction necessary to accomplish a specific and identified work requirement, of which a Job Order may be all or part. A Project may require multiple Job Orders.

**Proposal Package:** is all documents submitted by a Contractor in response to a Request for Proposal including: (1) Price Proposal and (2) construction schedule.

**Request for Proposal (RFP):** is a document prepared by the EIC and sent to the Contractor requesting the Contractor to prepare a Proposal Package for the Detailed Scope of Work.

## REFERENCES

NYS DOT Standard Specifications for Construction and Materials, May 1, 2008  
NYS DOT Standard Sheets  
The Gordian Group PROGEN Users Manual

## ADDENDUM

This section has been added to address areas of concern that the DOT and the OSC may have with existing JOC contracts.

In cases where the needs justify a second JOC of the same work type within similar or overlapping project limits, approval to overlap counties must be obtained from OSC prior to letting the contract. If there are multiple JOC's in the same region for the same type of work, the DOT will include language within the bid and resulting contract to explicitly state how work will be assigned among the multiple JOC contractors. DOT will submit draft language to the OSC within 45 days of the next letting of a JOC contract in the same region for the same type of work.

Federally funded JOCs with an initial contract value of more than \$1 Million cannot have funds replenished. An exception has been granted for contracts D261152 (R7) and D261205 (R3).

Again, this note is for existing contracts as of April, 2010.

Use of existing overlapping JOCs: use the JOC with the lower adjustment factor.