

DRAFT SPECIAL NOTE JOB ORDER CONTRACT (JOC)

CONTRACT OVERVIEW.

Description

A Job Order Contract is a non-specified quantity, non-specified location contract under which the Contractor will perform a series of individual work tasks, referred to as Job Orders, at different locations throughout the project limits.

As needs for individual job orders are identified, the scope of work will be explained to the Contractor at a Joint Scope Meeting. The Department will provide the Contractor with a draft Detailed Scope of Work, which the Contractor shall review. Once the Detailed Scope of Work is agreed upon, the Department will issue a Request for Job Order Proposal. The Contractor will then develop a Job Order Proposal containing a complete Job Order Price Proposal. The Department will review the Job Order Proposal, and if appropriate, will issue a Job Order. The resulting price will be a lump sum, fixed price for the completion of the work. At any given time, the Contractor may be developing and/or performing more than one Job Order.

Contract Scope

The scope of this Job Order Contract (JOC) is limited to the work described in the contract proposal. Only those portions of the standard specifications, errata and revisions pertaining to and consistent with the work described in the contract proposal, will be referenced in the Detailed Scope of Work provided for individual job orders issued under this Contract. Those portions of the standard specifications, errata and revisions for work outside the scope of this Contract are not applicable to this contract.

Contract Term

The base term of the Contract is one year. The Contract Completion Date indicated in the Proposal is an estimated date based on the expected Letting date. The base term will begin on the day the contract is awarded and will end one year later. There are 3 one year bilateral (mutually agreed upon) option periods. Both the Department and the Contractor must mutually agree to extend the contract for an additional term. If the Department and the Contractor agree to extend the contract, the Contractor shall submit a *CONR 250 Application for Extension of Completion Date* a minimum of 30 days prior to the current completion date. The additional term shall end on the same date (month and day) as the previous term. New work to be paid for with the replenished funds cannot begin until the new contract term begins.

Contract Value

The Minimum Contract Value is \$50,000 during the base contract period only. The Contractor is guaranteed to receive Job Orders totaling at least \$50,000 only during the base contract period. The Department has no obligation to issue Job Orders in excess of the Minimum Contract Value. The Initial Maximum Contract Value is intended to be a reasonable estimate of the maximum amount of work that the Contractor might receive during each contract period.

The Initial Contract Value will be the Total Sum as it appears on the Bid Form. The Contractor is not guaranteed to receive this amount of work.

The contract value may be increased by mutual agreement via Change Order up to, but not more than the Initial Contract Value for a maximum of 3 times. The total potential contract value will therefore be 4 times the Initial Contract Value.

No contract replenishment will be approved until the current contract term has exhausted its complete one year lifespan. If contract funds are exhausted before the end of the current contract term, additional funds will not be approved until the current term expires, and no additional work can be performed or paid for during that term. The contract funds may be

DRAFT SPECIAL NOTE JOB ORDER CONTRACT (JOC)

replenished for the next contract term, assuming there is a mutual agreement between the Department and the contractor to extend the contract.

CONTRACT AWARD.

The lowest bid will be determined by multiplying the dollars-cents quantity for each item by the Contractor's Bid Factor. The extended amount for each item will then be totaled, and the Total Sum will be used for the purpose of determining the low bidder. The Initial Contract Value will be equal to the Total Sum. The estimated quantities in dollars provided *in the bid form* are not intended to represent the value of work that will be assigned during certain days of the week or during certain hours.

INSURANCE.

The specific location of the work is not known at Letting. When a specific location for work is identified, the Contractor shall insure all Municipalities and Utilities listed as Additional Insured Parties in the Request for Job Order Proposal.

CONSTRUCTION TASK CATALOG

An electronic copy of a Construction Task Catalog for this Job Order Contract is available to each Bidder. A hard copy of the Construction Task Catalog will be provided to the successful bidder upon award of the contract.

Unit prices have been established for the tasks contained in the Construction Task Catalog. The descriptions contained in the Construction Task Catalog govern. A contract pay item described in the Standard Specifications may cover more than one task in the Construction Task Catalog, or a task in the Construction Task Catalog may cover more than one contract pay item. Therefore, the work included in a task will be first determined by reference to the Construction Task Catalog, and second by reference to the Standard Specifications. Payment Limits and Payment Lines are applicable and will be used to determine the quantities for which the Contractor will be paid.

CONTRACTOR'S BID FACTORS

The Contractor will bid two Contractor's Bid Factors to be applied to the pre-priced work tasks in the Construction Task Catalog to determine payment(s). In the Construction Task Catalog, under "Using the Construction Task Catalog" are notes that detail what costs are included in unit prices, and what costs must be included in the Contractor's Bid Factors.

The first Contractor's Bid Factor is for performing work during *Normal Working Hours (NWH)*. The Contractor's Bid Factor for Normal Working Hours includes work conducted from 7:00 a.m. to 5:00 p.m. Monday through Friday.

The second Contractor's Bid Factor is for performing work during *Other Than Normal Working Hours (OTNWH)*. The Contractor's Bid Factor for Other Than Normal Work Hours includes work conducted from 5:00 p.m. to 7:00 a.m. Monday through Friday, any time Saturday, Sunday, or a Holiday, or when the Department can only provide site access for a work day of less than 7 hours.

The price of an individual Job Order will be determined by multiplying the preset unit price(s) by the appropriate quantity (ies) and then by the appropriate Contractor's Bid Factor(s).

The bidder shall complete the bid form by writing in two Contractor's Bid Factors, one for *Normal Working Hours* and one for *Other Than Normal Working Hours*. Each Bid Factor shall be specified to three decimal places. Note that these are contract pay items for Contractor payment, not work items.

DRAFT SPECIAL NOTE JOB ORDER CONTRACT (JOC)

EXAMPLE: the Contractor's Bid Factor shall be entered as the following example illustrates.

1	.	1	9	8
OR				
0	.	9	8	7

ANNUAL ADJUSTMENT OF THE CONTRACTOR'S BID FACTORS

Adjustments made to the Contractor's bid factors will be made through a Change Order (CO). These adjustments will be made at the written request of the Contractor, not more frequently than annually, on or about the anniversary of the contract award date. This provision provides a means to adjust the base year Contractor's Bid Factors to the subsequent year(s).

The original Contractor's Bid Factors are valid for one year. The Contractor's Bid Factors will be adjusted on the first anniversary of the contract award date, and each 12 months thereafter, based on the 20 City Average Cost Construction Index as published in Engineering News Record (ENR), for Regions 1-10 and the New York City Cost Construction Index for Region 11.

The "base year" is the last 12 month period ending with the month prior contract award. The "base year index" is determined by summing the monthly CCI indices for each of the 12 months of the "base year" and dividing by 12.

The "first year period" is the 12 month period starting with the month of contract award. The "first year index" is determined by summing the monthly CCI indices for the first year period and dividing by 12.

The Adjustment for the 12 months following the first year period is determined by dividing the "first year index" by the "base year index." The new Contractor's Bid factor is determined by multiplying the Adjustment by the original Contractor's Bid Factor.

The Adjustment for subsequent periods is determined by the same procedure as described above, using the year just ended as the first year, and the previous year as the base year. All the above computations shall be carried to five (5) decimal places and then rounded to four (4) decimal places by increasing the fourth decimal place if the fifth decimal is equal to five or greater.

SOURCES OF SUPPLY

Before a Job Order involving Prestressed Concrete Units (Structural), Structural Steel, Bridge Bearings, Armored Bridge Joint Systems, Bridge and Culvert Railings or Overhead Sign Structures is issued, the Contractor shall notify the Deputy Chief Engineer (Structures) of the name and address of the fabricator. This notification shall list the actual shop(s) in which the materials will be manufactured and/or fabricated. The Contractor shall notify the Engineer of the proposed sources of materials sufficiently in advance of their use so that proper inspection may be made.

PROJECT SAFETY AND HEALTH PLAN.

Before the work begins on any Job Order and periodically throughout the contract duration, the Contractor's supervisory staff shall meet with the Engineer to review and discuss the status of

DRAFT SPECIAL NOTE JOB ORDER CONTRACT (JOC)

safety issues. The Contractor may be required to submit an amendment to the overall plan for any particular Job Order that contains work that presents hazards not adequately addressed by the Contractor's Project Safety and Health Plan.

SUBLETTING OR ASSIGNING THE CONTRACT

The Contractor shall perform with its own organization contract work amounting to not less than 30 percent of the original total contract bid price.

Subcontractor Approval is required for any firm that performs the on-site completion of construction tasks in excess of \$10,000.

PROCEDURES FOR DEVELOPING A JOB ORDER

Initiation of a Job Order.

All Job Orders shall be consistent with the scope of work listed in the contract proposal.

Individual Job Orders are capped at \$500,000. Prior approval to exceed this threshold must be obtained from the NYS Office of the State Comptroller (OSC). On 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-priced task will require the prior approval of OSC.

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

Joint Scope Meeting.

After the need for work by the Contractor is identified, the Department will notify the Contractor by issuing a Notice of Joint Scope Meeting. The Contractor shall attend the Joint Scope Meeting, typically held on the site of the proposed work, and discuss, at a minimum:

- a. The general scope of the work;
- b. Existing conditions, presence of waterways, wetlands, or other natural resources;
- c. Potential presence of hazardous materials on the site;
- d. Means and methods, and alternatives for accomplishing the work;
- e. Access to the site and protocol for admission;
- f. Staging area availability/location;
- g. Requirements for catalog cuts, technical data, samples and shop drawings;
- h. Requirements for professional services, including sketches, drawings, and specifications;
- i. Scheduled work hours;
- j. Construction duration;
- k. specific quality requirements for equipment and material;
- l. Due date for the Job Order Proposal.

Detailed Scope of Work.

Upon completion of the joint scope meeting, the Department will prepare the Detailed Scope of Work. The Detailed Scope of Work may reference any sketches, drawings, photographs, and specifications required to accurately document the work to be accomplished in connection with a particular Job Order. The Engineer will then forward the Detailed Scope of Work to the Contractor along with a Request for Proposal (RFP) which will include the date on which the Proposal is due. The Contractor shall review the Detailed Scope of Work and request any desired changes or modifications thereto.

DRAFT SPECIAL NOTE JOB ORDER CONTRACT (JOC)

Request for Job Order Proposal

When an acceptable Detailed Scope of Work has been completed, the Department will issue a written Request for Job Order Proposal to the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work will be the basis on which the Contractor will develop its Job Order Proposal and on which the Department will evaluate the proposal. The Contractor does not have the right to refuse to perform any task item or any work in connection with a particular project.

Job Order Price Proposal.

A Job Order Price Proposal is a written price proposal prepared by the Contractor that sets forth the cost to complete the Detailed Scope of Work.

The Contractor will prepare Job Order Price Proposals in accordance with the following: The Department will determine whether an item is a Pre-priced Task or a Non Pre-priced Task.

1. Pre-priced Tasks:

For Pre-priced Tasks the Contractor shall identify the task, quantities required and unit prices from the Construction Task Catalog.

2. Non-Pre-priced Tasks:

Non-Pre-priced Tasks shall be identified separately. When developing Non Pre-priced Tasks, reference shall be made to the statewide or regional weighted average bid price for a minimum of 3 contracts for similar type, quantity, and/or location of work from the Weighted Average Item Price Report or other recent contracts, adjusted for documented increase or decrease in labor, materials, equipment, mobilization, and/or site conditions.

Information submitted in support of Non Pre-priced Tasks is required, and may include, but is not limited to: Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the proposed item.

If the Contractor is required to pay an application fee to obtain a permit or license, then the amount of any receipted fee paid by the Contractor will be treated as a Non Pre priced Task to be paid without mark-up. The cost of expediting services fees are not reimbursable.

For Non Pre-priced Tasks that cannot be referenced weighted average bid prices, the final price submitted for shall be according to the following force account estimate formula:

A = Labor Cost - Wages and Fringe Benefits per the Prevailing Wage Rate Schedule

B = Material Costs (supported by three quotes for materials over \$25,000)

C = Equipment Costs (in accordance with §109-05B.1.c.)

D = Subcontractor Costs (supported by three quotes for subcontractor costs over \$25,000)

E = Required Insurances (in accordance with §107-06 *Insurance*)

F = Overhead Costs = (in accordance with §109-05B.1.e)

G = Profit = (in accordance with §109-05B.1.e)

H = Subcontractor Allowance = (in accordance with §109-05B.2.)

Total Cost of Non Pre-Priced Task = A + B + C + D + E + F + G + H

Non Pre-priced Tasks will be paid on a lump sum basis using a Contractor's Bid Factor of 1.000.

DRAFT SPECIAL NOTE JOB ORDER CONTRACT (JOC)

Contractor's Job Order Proposal.

The Contractor's Job Order Proposal is a set of documents which shall include, at a minimum:

- a. Job Order Price Proposal;
- b. Required architectural or engineering drawings;
- c. Required catalog cuts, technical data or samples;
- d. List of anticipated Subcontractors and Material Suppliers indicating D/M/WBE status and anticipated price;
- e. Proposed construction schedule;
- f. Sample warranties or guarantees for materials, equipment or systems proposed, if required;

The Contractor shall procure all permits and licenses necessitated by the Contractor's operations. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including architectural or engineering drawings and information required for filing.

The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Job Order Proposal. Incomplete Job Order Proposal packages will be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order, but should average between 7 and 14 days. On complex Job Orders, such as Job Orders requiring engineering/ architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents and the Job Order Proposal and so reflected in the Proposal due date.

By submitting a signed Job Order Price Proposal to the Department, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted.

In order to assist in reviewing the Job Order Price Proposal, the Contractor shall as part of the Job Order Proposal prepare and submit to the Engineer for approval, a progress schedule showing the order in which the Contractor proposes to carry on the work, the date on which it will start the major items of work (including but not limited to excavation, drainage, paving, structures, mobilization, soil erosion and sediment control, etc.) and the critical features (including procurement of materials, plant and equipment) and the forecasted dates for completing the major items and the complete .

Department Review of the Contractor's Job Order Proposal.

The Department will evaluate the completed Job Order Proposal and compare these with the Department's cost estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the nature and quantity of tasks proposed.

The Department reserves the right to reject a Job Order Proposal or cancel a proposed work task for any reason. The Department also reserves the right not to issue a Job Order if that is determined to be in the best interests of the State. The Contractor shall not recover costs arising out of or related to the development of the Job Order Proposal including, but not limited to, the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Price Proposal, subcontractor costs, and the costs to review the Job Order Proposal with the Department. The Contractor may recover costs for architectural and engineering services arising out of, or related to, the development of a Job Order that is not issued.

DRAFT SPECIAL NOTE JOB ORDER CONTRACT (JOC)

Proposal Review Meeting.

The Engineer will document requested changes to the Contractor's original Proposal and return a marked up copy to the Contractor. If necessary, the Contractor may request a Proposal Review Meeting to review requested changes.

During the proposal Review meeting, the Engineer will explain requested changes to the Proposal. Changes may be made to the Price Proposal and/or the Detailed Scope of Work. The Contractor should have supporting documentation available and be prepared to explain the tasks selected and calculations performed. If an agreement on specific tasks or quantities cannot be reached, a second site visit may be conducted to verify existing conditions.

Job Order

A Job Order is a written order that directs the Contractor to perform the work referenced in the Detailed Scope of Work. A signed copy of each Job Order will be provided to the Contractor, and will reference the Detailed Scope of Work and set forth the price to be paid and the time to complete the work. The Job Order, signed by the Engineer and delivered to the Contractor constitutes the Department's acceptance of the Contractor's Job Order Proposal.

No Job Orders will be issued if a time extension is required to reasonably complete the work or if additional funding is required.

Supplemental Job Order

After the Job Order is issued, if the Engineer determines that extra, or changed work is or has been required in connection with the construction of the approved Job Order, the Contractor shall develop a supplemental Job Order. This supplemental can be either a positive quantity or a negative quantity depending on the situation involved (additional quantity/extra work performed or quantity/work in the 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 shall not be modified.

Job Order Status.

As work progresses, the Contractor shall update the Job Order status and the dates in with accurate information (construction start date, construction completion date, etc.).

COMPLETING THE WORK

The Contractor shall perform tasks in accordance with approved and issued Job Orders the Construction Task Catalog for the pre-set unit price multiplied by the quantity, multiplied by the appropriate adjusted Contractor's Bid Factor for tasks performed during Normal Working Hours or for tasks performed during Other Than Normal Work Hours. The Contractor shall perform the Detailed Scope of Work for the Job Order Price as calculated in accordance with the procedure for developing Job Orders.

The Contractor shall employ and supply a sufficient force of workers, materials and equipment and shall progress the work with such diligence so as to ensure completion of the Detailed Scope of Work within the Job Order Completion Time or within such extended time for completion as may be granted by the Engineer.

When installed quantities differ from those in the Job Order, a Supplemental Job Order will be developed to address the quantity variation(s). When quantities are not specified in the Detailed Scope of Work, the Job Order Price will be deemed to be lump sum for such work.

DRAFT SPECIAL NOTE JOB ORDER CONTRACT (JOC)

FAILURE TO COMPLETE WORK ON TIME

When specified in the Job Order, Liquidated Damages may be assessed for each calendar day, or any portion thereof, for failure to complete the work or for failure to comply with requirements shown in the Job Order. The Contractor may be charged \$100 for each day after the proposal due date that the Job Order Proposal is not submitted.

SCHEDULE OF LIQUIDATED DAMAGES

Initial Contract Value		Liquidated Damages per Calendar Day
From More Than	To and Including	
\$0	\$ 500,000	\$ 500
\$500,000	\$2,000,000	\$1,000

DELAY PROVISIONS.

If the Contractor is delayed in the commencement, prosecution or completion of the work by any act of the Department or anyone employed by the Department, or by any cause beyond the Contractor's control, then the Contractor will be entitled to an extension of time only. If the Contractor is prevented from working on a particular date as a result of an error or omission by the Department, and the Contractor incurs unavoidable labor costs as a direct result thereof the Contractor will be reimbursed the for wage, fringe benefit, Standard Labor Markup, and Workers' Compensation costs. The Contractor will also be reimbursed for construction tasks required as a direct result of such error or omission, such as closing off areas of work. No other costs shall be paid as a result of a late cancellation.

CONTRACT PAYMENTS.

For all Job Orders less than \$25,000 or with a Job Order Completion Time of 30 days or less, one payment will be made when the Work is completed and accepted. For all other Job Orders, semi-monthly or monthly payments will be made to the Contractor in accordance with §109-06 of the Standard Specifications.

ELIMINATED MATERIALS.

Costs for materials required by the Detailed Scope of Work and not incorporated into the work due to changes caused by field conditions or revisions to the design by the Department after the material was ordered or purchased, will be reimbursed in accordance with §109-08 *Eliminated Materials*.