



CITY OF AUBURN

KING AND PIERCE COUNTIES,
WASHINGTON

JOB ORDER CONTRACTING SPECIAL PROVISIONS

for

2016 JOB ORDER CONTRACTING

Contract Nos. JOC16-(A/B)

City of Auburn
Engineering Division
Community Development and Public Works Department

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(253) 931-3010
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1. Terminology

1.1 Job Order Contracting Definitions

- A. Adjustment Factor - A competitively bid adjustment to be applied to the Unit Prices listed in the Construction Task Catalog® and to non-pre-priced tasks.
- B. Award Criteria Figure - The amount determined in the Award Criteria Figure Calculation section of the Proposal Form, which is used for the purposes of determining the lowest Bid.
- C. Base Term - The initial period of the Contract and does not include any Option Terms.
- D. Construction Task Catalog® - A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
- E. Detailed Scope of Work - A document setting forth the work the Contractor is obligated to complete for a particular Job Order.
- F. Estimated Annual Value - An estimate of the value of Job Orders that could be issued to the Contractor each year.
- G. 24-Hour to 72-Hour Response Work – Work, as defined by the City, requiring a response time of no longer than 24 to 72 Hours.
- H. Less than 24-Hour Response Work – Work, as defined by the City, requiring a response time of less than 24-Hours.
- I. Job Order - A written order issued by the Owner, such as a Purchase Order, requiring the Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price. A project may consist of one or more Job Orders.
- J. Job Order Completion Time - The time within which the Contractor must complete the Detailed Scope of Work assigned by the City.
- K. Job Order Price - The value of the approved Job Order Price Proposal and the amount the Contractor will be paid for completing a Job Order.
- L. Job Order Price Proposal - A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
- M. Job Order Proposal - A set of documents including at least: (a) Job Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated Subcontractors and Materialmen; (d) Construction schedule; and (e) other requested documents.
- N. Joint Scope Meeting - A site meeting to discuss the work before the Detailed Scope of Work is finalized.
- O. Maximum/Estimated Contract Value - The maximum/estimated value of Job Orders that the Contractor may receive under this Contract.
- P. Minimum Contract Value - The minimum value of Job Orders that the Contractor is guaranteed the opportunity to perform under this Contract.
- Q. Non Pre-priced Task - A task that is not set forth in the Construction Task Catalog®.
- R. Normal Working Hours - Includes the hours from 7:00 a.m. to 6:00 p.m. Monday through Friday, except for City holidays.
- S. Notice to Proceed - A written notice issued by the City directing the Contractor to proceed with construction activities to complete the Job Order.

- T. Option Term - An additional period of time beyond the Contract Term which extends the termination date of the Contract, as determined by the City.
- U. Other than Normal Working Hours - Includes the hours of 6:01 p.m. to 6:59 a.m. Monday through Friday and all day Saturday, Sunday, and Owner Holidays.
- V. Pre-priced Task - A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.
- W. Project - The collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders.
- X. Request for Proposal - A written request to the Contractor to prepare a Proposal for the Detailed Scope of Work referenced therein.
- Y. Response Time – the length of time from when the City first notifies the Contractor of the need to complete a Job Order and the time the Contractor is on-site at the location of the needed work and the work is underway by the Contractor.
- Z. Supplemental Job Order - A secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.
- AA. Technical Specifications - The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- BB. Unit Price - The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs® by change order. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
- CC. Work - All materials, labor and use of tools, equipment and services necessary by the Contractor and/or Subcontractor to complete the Job Order.

2. Award of Individual Job Orders

2.2 The City may award an individual Job Order to any selected Contractor. Selection of the Contractor and award of the Job Order will be in compliance with established City procedures and based on one or more of the following criteria:

- A. Rotational selection among all Contractors, unless otherwise determined by the City.
- B. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, design management requirements, etc.
- C. Balancing of work load (Job Order dollar volume and construction backlog) among Contractors.
- D. Management of Job Order dollar volume within bonding limitations of the Contractor.
- E. Price, as it relates to the City's independent cost estimate.
- F. Contractor's responsiveness to Job Orders.
- G. Other appropriate criteria as deemed in the best interest of the City.

3. Procedure for Developing a Job Order

3.1 Initiation of a Job Order

- A. As the need exists, the City will notify the Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting.
- B. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
 - 1) the general scope of the work;
 - 2) alternatives for performing the work and value engineering;
 - 3) access to the site and protocol for admission;
 - 4) hours of operation;
 - 5) staging area;
 - 6) requirements for catalog cuts, technical data, samples and shop drawings;
 - 7) requirements for professional services, sketches, drawings, and specifications;
 - 8) construction duration;
 - 9) the presence of hazardous materials;
 - 10) date on which the Job Order Proposal is due.
 - 11) Applicable Adjustment Factors
- C. Upon completion of the joint scoping process, the City will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the City will issue a Request for Proposal that will require the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the City, will be the basis on which the Contractor will develop its Job Order Proposal and the City will evaluate the same. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

3.2 Preparation of the Job Order Price Proposal.

- A. The Contractor's Job Order Proposal shall include, at a minimum:
 - 1) Job Order Price Proposal;
 - 2) Required drawings or sketches;
 - 3) List of anticipated Subcontractors and Materialmen;
 - 4) Construction schedule;
 - 5) Other requested documents.
- B. The Job Order Price shall be the value of the approved Job Order Price Proposal.
- C. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (unit price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks x Non pre-priced adjustment factor..
- D. The Contractor will prepare Job Order Price Proposals in accordance with the following:
 - 1) Pre-priced Task: A task described in, and for which a unit price is set forth in, the Construction Task Catalog[®].
 - 2) Non Pre-priced Task: A task that is not set forth in the Construction Task Catalog[®]. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:

- a) Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.
- b) If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog[®]. If the work is to be subcontracted, the Contractor must submit three independent quotes from subcontractors. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The City may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable as determined by the City.
- c) The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

For Non Pre-priced Tasks Performed with Contractor's Own Forces:

A = The hourly rate for each trade classification not in the Construction Task Catalog[®] multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog[®] multiplied by the quantity;

C = Lowest of three independent quotes for all materials.

Total for a Non Pre-priced Tasks performed with Contractor's Own Forces = (A+B+C) x Non Pre-Priced Task Adjustment Factor

For Non Pre-priced Tasks Performed by Subcontractors:

If the Non Pre-priced Task is to be subcontracted, the Contractor must submit three independent quotes for the work.

D = Lowest of three Subcontractor Quotes

Total Cost for Non Pre-priced Tasks performed by Subcontractors = D x Non Pre-Priced Task Adjustment Factor

- d) After a Non Pre-priced Task is used on three separate Job Orders, the Unit Price for such task will be established, following approval by the City, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.
 - e) The City's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.
 - f) No more than twenty percent (20%) of the Job Order Price Proposal may consist of tasks not contained in the Construction Task Catalog[®].
- E. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. All and any City permit fees will be paid to the City directly by the City.
 - F. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.
 - G. The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Proposal. All incomplete Job Order Proposals shall 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 seven and fourteen days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be

made to provide adequate time for preparation and submittal of the necessary documents.

- H. For Less than 24-Hour Response and 24-Hour to 72-Hour Response Job Orders the Job Order Proposal may be developed after the work is underway or completed and the Contractor may be directed to begin work immediately with the paperwork to follow.
- I. By submitting a Job Order Proposal to the City, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the City.
- J. If the Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.

3.3 Review of the Job Order Proposal and Issuance of the Job Order

- A. The City will evaluate the entire Job Order Price Proposal and compare these with the City's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.
- B. The Contractor may choose the means and methods of construction; subject however, to the City's right to reject any means and methods proposed by the Contractor that:
 - 1) Will constitute or create a hazard to the work, or to persons or property;
 - 2) Will not produce finished Work in accordance with the terms of the Contract; or
 - 3) Unnecessarily increases the price of the Job Order when alternative means and methods are available.
- C. The City reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The City also reserves the right not to issue a Job Order if it is determined to be in the best interests of the City. The City may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the City.
- D. By submitting a signed Job Order Proposal to the City, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the City.
- E. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the City and delivered to the Contractor constitutes the City's acceptance of the Contractor's Job Order Proposal. A signed copy of the Job Order will be provided to the Contractor.
- F. For Less than 24-Hour and 24-Hour to 72-Hour Response Job Orders, the Contractor shall be required to follow alternative procedures as established by the City. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures.

4. Contract Modifications

Changes to the Contract may be accomplished after execution of the Contract and without invalidating the Contract, by Change Order.

5. Changes in the Work

- 5.1** The City, without invalidating the Job Order, may order changes in the Work by altering, adding to or deducting from the Work, by issuing a Supplemental Job Order.
- 5.2** Credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Job Order Price Proposal.

6. ENR CCI Adjustment of the Adjustment Factors

- 6.1** Economic Price Adjustment: The Adjustment Factors may be updated on each anniversary of the contract execution date to account for changes in construction costs, provided, the Contractor requests in writing, approximately thirty calendar days prior to the anniversary of the contract execution date, that the Adjustment Factors be updated. Such request shall be delivered to the City. In the event the Contractor fails to deliver the request timely, then the City shall determine the date on which the Adjustment Factors will be updated, but in no event will such date be later than thirty calendar days after the written request to update the Adjustment Factors is received by the City. Thereafter, the Contractor's Adjustment Factors will be adjusted according to the following:
- A. The Contractor's Normal Working Hours and Other than Normal Working Hours Adjustment Factors will be adjusted according to the following:
- 1) A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for Seattle published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the bid due date (e.g. April bid date, Base Year Index is April of the prior year to March of the bid date year).
 - 2) A Current Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for Seattle published in the Engineering News Record (ENR) for the 12 months beginning with the month of anniversary of the bid due date (e.g. April bid date, Current Year Index is April of the prior year to March of the current year).
 - 3) The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
 - 4) The Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain the Contractor's new Adjustment Factors effective for the next 12 months.
 - 5) Averages shall be obtained by summing the 12 month indices and dividing by 12.
 - 6) All calculations in this article shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
 - 7) The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
 - 8) The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).
- 6.2** ENR occasionally revises indices. ENR CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive

adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.

- 6.3 Under all circumstances, should the Contractor submit a Job Order Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the Job Order Price submitted in the Job Order Proposal.
- 6.4 The Contractor cannot delay submission of the Job Order Proposal past the due date to take advantage of a scheduled update of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.
- 6.5 The Adjustment Factor for Non Pre-priced Tasks will remain constant for the duration of the Contract.

7. Computer Requirements

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

8. Job Order Contracting Software

The City selected The Gordian Group's (Gordian) Job Order Contracting ("JOC") Solution (Gordian JOC Solution™) for their JOC program. The Gordian JOC Solution includes Gordian's proprietary eGordian® JOC applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by the Contractor to prepare and submit Job Order Price Proposals, subcontractor lists, and other requirements specified by the City. The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement, and pay a JOC System License Fee to obtain access to Gordian's JOC Solution. The Contractor's use, in whole or in part, of Gordian's JOC Applications, Construction Task Catalog® and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the City is strictly prohibited unless otherwise approved in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following JOC System License.

9. Job Order Contracting System License

The City selected The Gordian Group's Job Order Contracting (JOC) system for the execution of the JOC program. The Gordian JOC system includes The Gordian Group's proprietary eGordian® JOC information management applications, construction cost data and Construction Task Catalog® (collectively "Proprietary Information"), which shall be used by the Contractor to prepare and submit Job Order Proposals, subcontractor lists, and other requirements specified in the general conditions and as may be requested by the City. The Contractor shall be required to execute Gordian's JOC System License and User Agreement, and shall pay a 1% JOC System License Fee on all work awarded to the JOC contractor by the City for access to the Gordian JOC system and Proprietary Information.

JOC System License and Fee Agreement

This Agreement is made this _____ day of _____, 2016 by and between **[Insert Contractor's Full Legal Name]**, whose address is **[Insert Contractor's Legal Address]** ("Contractor"), and The Gordian Group, Inc., whose address is 30 Patewood Drive, Suite 350, Greenville, SC 29615 ("Gordian").

WHEREAS, **[Insert Owner's Full Legal Name]** ("Owner") has awarded Contract No. **[Insert Number]** ("Contract") to the Contractor.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and Owner ("Owner Contract"), Gordian has agreed to provide Contractor with a license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, the parties agree to the terms and conditions of the following JOC System License and Contractor License Fee ("Agreement"):

Gordian hereby grants to Contractor, and Contractor hereby accepts from Gordian for the term of the Contract, or the term of the Owner Contract, whichever is shorter, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Contractor's responsibilities under the Contract ("Limited Purpose"). Contractor hereby agrees that the Proprietary Information shall include, but is not limited to, Gordian's eGordian[®] JOC information management applications and support documentation, Construction Task Catalog[®], training materials, and any other proprietary materials provided to Contractor by Gordian. In the event the Contract expires or terminates, or the Owner Contract expires or terminates, this JOC System License shall terminate and Contractor shall return all Proprietary Information in its possession to Gordian.

Contractor acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Contractor shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

In accordance with the terms of the Contract, Contractor hereby agrees to pay Gordian a license fee ("Contractor License Fee") equal to one percent (1%) of the value of each Job Order, Purchase Order or other similar purchasing document issued to Contractor by Owner pursuant to the Contract. Contractor further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Contractor's receipt of each Job Order, Purchase Order or other similar purchasing document from the Owner. Contractor shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month. In the event a modification to an issued Job Order results in a reduction of the value of the Job Order, Gordian shall issue a credit to Contractor only when the applicable license fee credit is greater than or equal to \$25.00.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Contractor acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Contractor, subject to federal, state and local laws related to public disclosure. Contractor further acknowledges that a breach of any of the terms of this Agreement by Contractor will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions,

including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Contract, the Owner Contract, or any Job Order, Purchase Order or similar purchasing document issued to Contractor by Owner, this Agreement shall take precedence.

[Insert Contractor's Full Legal Name]

The Gordian Group, Inc.

Signature: _____

Signature: _____

Name: _____

Name: Ammon T. Leshner

Title: _____

Title: Vice President of Legal Affairs

ACKNOWLEDGMENT OF [Contractor]

STATE OF _____

COUNTY OF _____

I, the undersigned Notary Public, do hereby certify that the foregoing instrument was acknowledged before me this _____ day of _____ and the document was executed by the above named _____ of his/her own free will.

Witness my hand and seal this ____ day of _____, 2015.

Signature of Notary Public

Place Notary Seal Above

END OF JOC SPECIAL PROVISIONS