

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Authorize the City Manager to Execute Contracts with Centennial Contractors, Forma Construction Company, and Saybr Contractors for Job Order Contracting General Construction Services
DEPARTMENT:	Administrative Services
PRESENTED BY:	Sara Lane, Administrative Services Director Dan Johnson, Parks, Fleet & Facilities Manager Janet Bulman, Purchasing Coordinator
ACTION:	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

Staff is requesting City Council approval to authorize the City Manager to execute contracts with Centennial Contractors, Forma Construction Company, and Saybr Contractors for Job Order Contracting (JOC) General Construction Services. The contractors will perform projects under a JOC program for the City as provided for in Chapter 39.10 RCW Alternative Public Works Contracting Procedures. The primary objectives of the JOC program are to rapidly engage contractors in the performance of small to medium sized public work projects; to reduce construction, design, and planning costs; and to develop relationships and contracts with contractors to more quickly and efficiently respond to emergency situations.

The JOC General Construction Services selection process included a Request for Proposal (RFP) process to request proposals from interested parties. At the conclusion of the RFP process, five companies submitted proposals that were evaluated by an Employee Evaluation Panel based on specific criteria. Based on the evaluation, Centennial Contractors, Forma Construction Company, and Saybr Contractors rated the highest based on their qualifications, experience, capability, customer service and quality assurance.

If approved by the City Council, the JOC General Construction Services contract term would be effective upon execution and extend for two years, with an option to extend for one additional year. Contract prices are fixed and would increase or decrease annually based on the Construction Cost Index (CCI).

RESOURCE/FINANCIAL IMPACT:

The Minimum Contract Value for each awarded Contract is \$25,000. The awarded Contractor(s) are each guaranteed to receive the opportunity to perform Job Orders totaling at least \$25,000 during the Base Term of the Contract. The Estimated Annual Value per Contract is \$2,000,000 per year.

The Contractor may be issued Job Orders exceeding the Estimated Annual Value during any year of the Contract. The Contractor is not guaranteed to receive this volume of Job Orders; it is merely an estimate. The City has no obligation to issue Job Orders in excess of the Minimum Contract Value.

The City reserves the right to issue up to the maximum amount specified in RCW 39.10.440, which is up to \$4,000,000 per contractor per year. The Maximum Contract Value shall not exceed the value set forth in the RCW. The maximum dollar amount for a Job Order is \$500,000, excluding Washington state sales and user tax.

RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute contracts with Centennial Contractors, Forma Construction Company, and Saybr Contractors for Job Order Contracting General Construction Services.

Approved By: City Manager ***DT*** City Attorney ***MK***

BACKGROUND

During the 2019 Legislative Sessions, the Revised Code of Washington (RCW) sections 39.10.410.420 through 39.10.410.460 were amended to allow all public agencies to use Job Order Contracting (JOC) for public works projects when a determination is made that the use of job order contracts will benefit the public. A JOC is an indefinite quantity construction contract pursuant to which the Contractor may perform an ongoing series of individual Projects at different locations and facilities under the jurisdiction of the Owner.

Job Order Contracting is typically used for small to medium sized repair and rehabilitation work, replacement in kind projects, and minor new construction. The contract documents include a Construction Task Catalog® (CTC) containing pre-priced tasks for construction work with preset Unit Prices. All Unit Prices are based on local labor, material and equipment costs and are for the direct cost of construction.

RCW 39.10.440 requires at least 90% of work contained in a job order contract must be subcontracted to entities other than the job order contractor. The job order contractor must distribute contracts as equitably as possible among qualified and available subcontractors including certified minority and woman-owned subcontractors to the extent permitted by law as demonstrated on the subcontractor and supplier project submission, and shall limit subcontractor bonding requirements to the greatest extent possible.

The primary objectives of a JOC program are to rapidly engage contractors in the performance of small to medium sized public work projects; to reduce construction, design, and planning costs; and to develop relationships and contracts with contractors to more quickly and efficiently respond to emergency situations.

The JOC program will give the City the ability to accomplish a substantial number of individual projects with a single competitively bid solicitation. The JOC program is anticipated to be utilized in many different City departments/divisions including Public Works Engineering & Construction, Road Maintenance, Wastewater and Surface Water Operations, Parks, and Facilities.

DISCUSSION

The JOC selection process included a Request for Proposal (RFP) process (RFP # 9884) to request proposals from interested parties. The following five companies submitted proposals and were evaluated by an Evaluation Panel:

- Centennial Contractors
- Forma Construction
- Saybr Contractors
- Trinity Contractors
- Colacurcio Brothers

The companies were evaluated based on the following criteria:

- Mandatory minimum qualifications,
- Qualifications and Relevant Experience,
- Technical Capability, Approach and Capacity,
- Communication and Customer Service,

- Risk, Performance and Quality Assurance, and
- Price Proposal/Adjustment Factor to the CTC.

Based on the evaluation of the proposals, Centennial Contractors, Forma Construction Company, and Saybr Contractors rated the highest to perform projects under the JOC program. All three firms have strong proactive programs that focus on developing and growing minority and woman-owned business participation, including financial, administrative, and field support, and plan to reach out to local qualified subcontractors and specialists about bid opportunities on JOC projects.

If approved by the City Council, the JOC General Construction Services contract term would be effective upon execution and extend for two years, with an option to extend for one additional year. Contract prices are fixed and would increase or decrease annually based on the Construction Cost Index (CCI).

Staff is also requesting Council authorization for the City Manager to sign individual job orders up to the maximum dollar amount allowed by RCW 39.10.450, which is currently \$500,000, excluding Washington state sales tax.

RESOURCE/FINANCIAL IMPACT

The Minimum Contract Value for each awarded Contract is \$25,000. The awarded Contractor(s) are each guaranteed to receive the opportunity to perform Job Orders totaling at least \$25,000 during the Base Term of the Contract. The Estimated Annual Value per Contract is \$2,000,000 per year.

The Contractor may be issued Job Orders exceeding the Estimated Annual Value during any year of the Contract. The Contractor is not guaranteed to receive this volume of Job Orders; it is merely an estimate. The City has no obligation to issue Job Orders in excess of the Minimum Contract Value.

The City reserves the right to issue up to the maximum amount specified in RCW 39.10.440, which is up to \$4,000,000 per contractor per year. The Maximum Contract Value shall not exceed the value set forth in the RCW. The maximum dollar amount for a Job Order is \$500,000, excluding Washington state sales and user tax.

RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute contracts with Centennial Contractors, Forma Construction Company, and Saybr Contractors for Job Order Contracting General Construction Services.

ATTACHMENT

Attachment A: JOC General Construction Services Agreement

CITY OF SHORELINE, WASHINGTON JOB ORDER CONTRACT

THIS CONTRACT is by and between the City of Shoreline (hereinafter called City) and _____ (hereinafter called Contractor). City and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION 1 - WORK

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

1.1 The Work of this Contract will be set forth in the Detailed Scopes of Work referenced in the individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

1.2 The value of the Job Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non-Prepriced Tasks.

SECTION 2 – CITY REPRESENTATIVES

2.1 Project Manager. The City will appoint a Project Manager for each Job Order, who shall be the City's representative, assume all duties and responsibilities and have the rights and authority assigned to the Project Manager in the Contract Documents in connection with completion of the Work in accordance with the Job Order and the Contract Documents.

2.2 Contract Administrator. The JOC Contract Administrator is designated by the City to manage the Job Order Contracting program for the City. The Contract Administrator will oversee the execution of the program on behalf of the City and will provide overall guidance to the Project Managers and Contractor(s) in the execution of Job Orders. The Contract Administrator shall intervene in disputes or disagreements between the Project Manager and the Contractor. The Contract Administrator also may exercise any authority granted to Project Managers under the Contract Documents with respect to any Job Order at any time.

SECTION 3 - CONTRACT TIME

3.1 The Base Term of the Contract is two (2) years.

3.2 There is one (1) bilateral Option Term. Both parties must agree to extend the Contract for the Option Term. The duration of the Option Term is one year.

3.3 The City and the Contractor may agree to extend the Option Term.

3.4 All Job Orders issued during the term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after the Contract term has expired. All terms and

conditions of the Contract apply to each Job Order.

3.5 The Contractor shall commence work upon issuance of a Job Order and shall complete the Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

SECTION 4 - CONTRACT PRICE

4.1 City shall pay Contractor for completion of the Detailed Scopes of Work in accordance with the Contract Documents.

4.2 The Contract is an indefinite-quantity contract for general construction work and services. The Minimum Contract Value of Job Orders that the Contractor is guaranteed the opportunity to perform under this Contract is Twenty-Five Thousand Dollars (\$25,000). The Estimated Annual Value is two Million Dollars (\$2,000,000) for the City’s Job Order Contracting Program. The City reserves the right to issue up to the maximum amount specified in RCW 39.10.40 of Four Million Dollars (\$4,000,000) per year or such greater amount that may be authorized by statute. The Maximum Contract Value shall not exceed the value set forth in the RCW.

4.3 The Contractor is not guaranteed to receive the Estimated Annual Value. It is merely an estimate. Owner has no obligation to give the Contractor the opportunity to perform Job Orders in excess of the Minimum Contract Value.

4.4 The Contractor shall perform all work required, necessary, proper for or incidental to completing the Detailed Scope of Work called for in each individual Job Order issued pursuant to this Contract for the Unit Prices set forth in the Construction Task Catalog® and the following Adjustment Factors:

Normal Working Hours Adjustment Factor

7:00 am to 4:00 pm Monday through Friday, except for City Holidays:

_____.

Other Than Normal Working Hours Adjustment Factor

4:01 pm to 6:59 am Monday through Friday, and all-day Saturday, Sunday and City Holidays:

_____.

Non-Prepriced Adjustment Factor:

_____.

SECTION 5 - PAYMENT PROCEDURES

Contractor shall submit Applications for Payment in accordance with Article 12 the General Conditions. Applications for Payment will be processed by the Contract Administrator with approval by the Project Manager as provided in the General Conditions.

5.1 Progress Payments. City shall make progress payments on account of the Job Order Price on the basis of Contractor's Invoices as recommended by Project Manager and Contract Administrator in accordance with the General Conditions. All progress payments will be on the basis of the progress of the Work as established in the General Conditions (and in the case of Unit Price Work based on the number of units completed).

5.2.1 Final Payment. Upon final completion and acceptance of the work in accordance with the General Conditions, City shall pay the remainder of the Job Order Price as recommended by Project Manager and Contract Administrator. A Certificate of Completion signed by the Project Manager is required prior to payment of any final invoice(s).

5.2.2 As determined by the Project Manager, progress payments shall be made per the Project Payment Schedule.

5.2.3 Per RCW 39.10.450, for purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each Job order issued shall be treated as a separate contract. Contractor will provide the bonds as set forth in the RFP and in the General Conditions on the forms provided by the City.

SECTION 6 - INDEMNIFICATION

The indemnity and defense obligations in this Section 6 are in addition to any other indemnity and defense obligation elsewhere in the Contract Documents.

6.1 Contractor will defend and indemnify the City from any and all Claims arising out of, in connection with, or incident to any acts, errors, omissions, or conduct by Contractor relating to, or arising out of its performance of, this Contract. The Contractor will defend and indemnify the City whether a Claim is asserted directly against the City, or whether a Claim is asserted indirectly against the City, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City. The amount of insurance obtained by, obtainable by, or required of the Contractor does not in any way limit the Contractor's duty to defend and indemnify the City. The City retains the right to approve Claims investigation and counsel assigned to said Claim and all investigation and legal work regarding said Claim shall be performed under a fiduciary relationship to the City.

6.2 The Contractor's obligations under this Section shall not apply to Claims caused by the sole negligence of the City. If (1) RCW 4.24.115 applies to a particular Claim, and (2) such Claim is caused by or results from the concurrent negligence of (a) the Contractor, its employees, subcontractors/subconsultants or agents and (b) the City, then the Contractor's

obligations under this Section 6 shall apply only to the extent allowed by RCW 4.24.115.

6.3 As used in this section: (1) "City" includes the City's officers, employees, agents, and representatives; (2) "Claims" include all losses, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, whether threatened, asserted or filed against the City, whether such Claims sound in tort, contract, or any other legal theory, whether such Claims have been reduced to judgment or arbitration award, irrespective of the type of relief sought or demanded (such as money or injunctive relief), and irrespective of the type of damage alleged (such as bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages); and (3) "Contractor" includes Contractor, its employees, agents, representatives and subcontractors.

6.4 Contractor waives any right of contribution against the City. It is agreed and mutually negotiated that in any and all claims against the City, its agents or employees, the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts any of them may be liable, the defense and indemnification obligations hereunder shall not be limited in any way by any limitation on the amount of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under industrial worker's compensation acts, disability benefit acts, or other employees' benefit acts. Contractor's and City's signatures hereto indicate specific waiver of Contractor's industrial insurance immunity in order to fulfill this indemnity. Solely for the purpose of indemnification and defense as provided in this Contract, the Contractor specifically waives any immunity under the State Industrial Insurance Law, Title 51 RCW. The Contractor expressly acknowledges that this waiver of immunity under Title 51 RCW was the subject of mutual negotiation and was specifically entered into pursuant to the provisions of RCW 4.24.115.

SECTION 7 - CONTRACTOR'S REPRESENTATIONS

Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

7.2 Contractor is fully qualified to perform the Work to be performed hereunder in a competent and professional manner.

7.3 Contractor has given Project Manager written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Project Manager is acceptable to Contractor.

SECTION 8 - CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between the City and Contractor concerning the work consist of the following:

8.1 This Contract and its exhibits, if any. In a Federally Funded Job Order (as defined in the General Conditions), this Contract includes the applicable current Federal Contract Clauses, which the City will specifically designate in the Job Order. These Federal Contract Clauses are only applicable to that specific Federally Funded Job Order and have no force or effect with respect to any other Job Order. A Federally Funded Job Order may also include one-time changes to the Contract Documents specifically for that Job Order signed for the City by the Contract Administrator as necessary to coordinate the requirements of the applicable Federal Contract Clauses with the requirements of the Contract Documents.

8.2 General Conditions, attached hereto and incorporated by reference.

8.3 Supplementary Conditions, attached hereto and incorporated by reference.

8.4 The RFP and all addenda, incorporated by reference.

8.5 Contractor's Proposal, incorporated by reference. If there is inconsistency between any provision of the Contractor's Proposal and any other Contract Document, then the provision imposing the more stringent requirement on the Contractor will control.

8.6 The Construction Task Catalog®, incorporated by reference.

8.7 All Job Orders and related documents, including but not limited to, the Detailed Scope of Work with Drawings and/or Specifications, Request for Proposal, Price Proposal, Job Order Proposal, Notice to Proceed, submittals, record documents, and all required close-out documentation and warranties, incorporated by reference. If there is inconsistency between any provision of the documents listed in this Section 8.7 and any other Contract Document, then the provision imposing the more stringent requirement on the Contractor will control.

There are no Contract Documents other than those listed above in this Section 8. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions or Supplementary Conditions.

All Contract Documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. In cases of conflict in the requirements and provisions as set out by the Contract Documents, the specifications, or the drawings, such conflict shall be reconciled by the order of precedence in the order the Contract Documents are set forth above.

Additionally, in the event of conflicting provisions within the Job Order Contract, the following order of precedence with item (a) representing the highest precedence, for resolution of the conflict shall apply:

- a) Contract Modifications (later takes precedence over earlier)
- b) Agreement
- c) Addenda (later takes precedence over earlier)
- d) Job Orders (including Detailed Scopes of Work, Job Order Proposals, and any Supplemental Job Orders)
- e) Invitation for Bid

- f) General Terms and Conditions
- g) Special and Supplementary Conditions (when provided)
- h) The Construction Task Catalog©
- i) Gordian Technical Specifications

Any modification of any Contract Document listed in sections 8.1 to 8.6 above requires an amendment executed by an authorized representative of the City and by an authorized representative of the Contractor. Changes to Contract Documents listed under Section 8.7 may be executed by an authorized representative of the Contractor and by the Project Manager or the Contract Administrator for the City.

SECTION 9 – PREVAILING WAGE

Contractor shall comply with all state and federal laws relating to the employment of labor and wage rates to be paid. The Contractor will be required to file prevailing wage intents and affidavits with the Washington State Department of Labor & Industries for each Job Order. A Federally-Funded Job Order may specify the Davis-Bacon Act and Copeland Anti-Kickback Act, in which case Contractor shall comply with these requirements. The Contractor will pay Washington state prevailing wage or Davis-Bacon wages, whichever is higher.

SECTION 10 - MISCELLANEOUS

10.1 Terms used in this Contract which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

10.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.3 City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

10.4 This Contract is governed by the laws of the State of Washington, without regard to the principles of conflict of laws. Any action or suit brought in connection with this Contract shall be exclusively brought in the Superior Court of King County, Washington.

10.5 Force Majeure. Neither party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Agreement, Force Majeure means an occurrence that is beyond the reasonable control of and without fault

or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice, but no more than two (2) working days after the event, of the impediment and its effect on the ability to perform; failure to provide such notice shall preclude recovery under this provision.

10.6 Nondiscrimination. In hiring or employment made possible or resulting from this Agreement, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, citizenship or immigration status (except if authorized by federal or state law, regulation, or government contract), marital status, sexual orientation, honorably discharged veteran or military status, the presence of any sensory, mental, or physical handicap or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt or the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age (except minimum age and retirement provisions), citizenship or immigration status (except if authorized by federal or state law, regulation, or government contract), marital status, sexual orientation, honorably discharged veteran or military status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability.

10.7 This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by the Contractor to any other person or entity without the prior written consent of the City, which consent will not be unreasonably withheld. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of Contractor as stated herein.

10.8 Counterpart Originals. This Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts.

IN WITNESS WHEREOF, City and Contractor have signed this Contract. This Contract is effective as of the date of the last person to sign it, and may be executed in multiple counterparts, each of which shall be deemed an original.

This agreement is executed by:

City of Shoreline

By:

Name:

Title:

Address: 17500 Midvale Ave N

City/State/Zip: Shoreline, WA 98133-4905

Contractor

By:

Name:

Title:

Address:

City/State/Zip:

Date: _____

Date: _____