



## INFORMATIONAL MEMORANDUM

TO: **Transportation & Infrastructure Committee**  
FROM: **Henry Hash Public Works Director**  
BY: **Gail Labanara, Public Works Analyst**  
CC: **Mayor Ekberg**  
DATE: **August 16, 2019**  
SUBJECT: **Public Works Interlocal Joint Purchasing Agreement with the City of Bellevue Piggybacking for Job Order Contracting**

### **ISSUE**

Approve Interlocal Joint Purchasing Agreement with the City of Bellevue to piggyback the use of their Job Order Contract for a maximum amount of \$1,000,000.

### **BACKGROUND**

A Job Order Contract (JOC) is a State approved procurement method in which a contractor agrees to provide an indefinite quantity delivery of negotiated and definitive work orders from a pre-established catalog on public works contracts, all over a fixed period of time. The JOC procurement method is intended to streamline the public works process and reduce costs by utilizing pre-fixed unit prices, as submitted and agreed to by the selected contractor after an RFP process. Job Order Contracting reduces the lead-time for smaller public works projects and allows for work orders to be issued. The benefit to the contractor is that they are motivated to perform quality work at a reasonable cost by the promise of continued work orders and potential extension of the contract.

On July 28, 2019, the State legislature amended RCW 39.10.420 for Job Order Contracting and are now allowing all public bodies of the State of Washington to award job order contracts (which was formerly limited to cities greater than 75,000 population).

The City of Bellevue is allowing us to “piggyback” on their main JOC contract with Saybr Construction and their JOC consultant, Gordian Group, and allow Tukwila to use up to \$1 million in capacity (out of Bellevue’s \$4 million capacity per year over three years through September 2021).

### **ANALYSIS**

RCW 39.10.440 limits the use of JOC to no more than three job order contracts in effect at any one time. With Bellevue’s Interlocal Joint Purchasing Agreement, 5% of costs would be payable to Gordian, 10% to the main general contractor, Saybr, and at least 90% of the work would be subcontracted. All work would be paid prevailing wages and the job order contractor must distribute contracts as equitably as possible among qualified and available subcontractors, including certified minority and woman-owned subcontractors. The maximum dollar amount for any one work order is now \$500,000.

The process for a Job Order Contract is to identify the project and work with Gordian and Saybr to develop a scope of work. The contractor would then use a fixed pricing mechanism (from the RFP catalog) to list the proposed sub-contractors, the schedule, and the lump sum cost. In addition, any change orders would also be on the same fixed unit prices. The City would then decide if to approve the proposed work order with Gordian/Saybr or look at other options. There is no obligation to use JOC and other bidding options are always available.

**FINANCIAL IMPACT**

There is no financial impact. Budget limitations would still be applied, and we would use the City policy of Council approval for any contract over \$40,000. Finance may look at our financial policies when Tukwila surpasses the 20,000-population level.

**RECOMMENDATION**

Council is being asked to approve the Intergovernmental Agreement with the City of Bellevue for use of their Job Order Contract and to consider this item on the Consent Agenda at the September 3, 2019 Regular Meeting.

Attachments: Intergovernmental Agreement with the City of Bellevue  
Job Order Contracting for Novices  
Job Order Contracting Substitute House Bill 1295 for RCW 39.10.420 - 450

## INTERLOCAL JOINT PURCHASING AGREEMENT

THIS AGREEMENT is between the City of Bellevue, a political subdivision of the State of Washington, and City of Tukwila, a public agency under the laws of the State of Washington.

### WITNESSETH:

WHEREAS, the Interlocal Cooperation Act, as amended, and codified in Chapter 39.34 of the Revised Code of Washington provided for interlocal cooperation between governmental agencies; and

WHEREAS, Chapter 39.33 of the Revised Code of Washington provides for intergovernmental disposition of property; and

WHEREAS, the parties desire to utilize each other's procurement agreements when it is in their mutual interest; --

NOW, THEREFORE, the parties agree as follows:

1. **PURPOSE:** The purpose of this agreement is to acknowledge the parties' mutual interest to jointly bid the acquisition of goods and services where such mutual effort can be planned in advance and to authorize the acquisition of goods and services and the purchase or acquisition of goods and services under contracts where a price is extended by either party's bidder to other governmental agencies.
2. **ADMINISTRATION:** No new or separate legal or administrative entity is created to administer the provisions of this agreement.
3. **SCOPE:** This agreement shall allow the following activities:
  - A. Purchase or acquisition of goods and services by each party acting as agent for either or both parties when agreed to in advance, in writing;
  - B. Purchase or acquisition of goods and services by each party where provision has been provided in contracts for other governmental agencies to avail themselves of goods and services offered under the contract and/or where either party's bidder is willing to extend prices to other governmental agencies.
4. **DURATION AGREEMENT – TERMINATION:** This agreement shall remain in force until cancelled by either party in writing.
5. **RIGHT TO CONTRACT INDEPENDENT ACTION PRESERVED:** Each party reserves the right to contract independently for the acquisition of goods or services without notice to the other party and shall not bind or otherwise obligate the other party to participate in the activity.
6. **COMPLIANCE WITH LEGAL REQUIREMENT:** Each party accepts responsibility for compliance with federal, state or local laws and regulations including, in particular, bidding requirements applicable to its acquisition of goods and services.
7. **FINANCING:** The method of financing of payment shall be through budgeted funds or other available funds of the party for whose use the property is actually acquired or disposed. Each party accepts no responsibility for the payment of the acquisition



June 19<sup>th</sup>, 2019

Saybr Contractors  
Attention: John Pallotta  
3852 S 66<sup>th</sup> St  
Tacoma, WA 98409

RE: Job Order Contracting; City of Tukwila use of Bellevue Contract

Dear Mr. Pallotta:

The City of Bellevue and the City of Tukwila recently entered into the attached agreement, indicating intent to allow the City of Tukwila to issue work orders in a total amount not to exceed \$1,000,000 under the terms and conditions of Bellevue's Job Order Contracting agreements with Gordian Group and Saybr. A copy of the agreement between the Bellevue and City of Tukwila is attached for your reference.

The City of Bellevue is requesting that Saybr provide services directly to the City of Tukwila on the same terms and conditions as exist in those certain "Job Order Contracting Saybr" contract, dated September 19<sup>th</sup>, 2018. For work orders issued by the City of Tukwila for City of Tukwila projects, any obligations owed by Saybr under the Saybr contract shall be performed for or provided directly to the City of Tukwila.

Any invoice issued by Saybr for work for the City of Tukwila should contain the following:

All work described herein provided directly to the City of Tukwila and Saybr are subject to the terms and conditions of those certain "Job Order Contracting Saybr". The City of Bellevue is not a party to nor responsible for performance of or payment for the work described in this invoice."

Please indicate your consent to this joint purchasing arrangement by countersigning this letter where indicated below. This letter may be countersigned in multiple counterparts, which together shall constitute a single agreement. Please contact me if you have any questions.

Sincerely,  
CITY OF BELLEVUE  
OFFICE OF THE CITY ATTORNEY

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Nicholas Melissinos  
Deputy City Attorney  
Enclosure:

DATE

**ACKNOWLEDGED AND ACCEPTED BY SAYBR**

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Signature

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Printed Name

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Title

**ACKNOWLEDGED AND ACCEPTED BY THE CITY OF TUKWILA**

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Signature

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Printed Name

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Title

# **Job Order Contracting for Novices**

## ***Just the Basics***

*By: Gary Aller*

### **So, what is JOC?**

Job Order Contracting (JOC) is a way of getting small, simple, and commonly encountered construction projects done easily and quickly. A JOC contract usually applies to a specific site or sites and can be used for any number of jobs that need to be done for as long as the contract is in effect. The JOC method of project delivery was devised by the military sector in the 1980s as a way to overcome problems with the traditional Design Bid Build (DBB) or low-bid method. Using DBB, every project, no matter how small, had to be designed and put out for bid, with the award going to the lowest bidder.

Going through this procedure for every little job was becoming impractical. The common occurrences of construction delays, cost over-runs, and quality disputes were successfully reduced using the new method, and JOC has been equally successful in the private sector for more than a decade. Recent legislation and existing procurement regulations have authorized the use of JOC for public construction in many states (including New Mexico). Essentially, JOC provides owners with an on-call general contractor who is familiar with the site and the owner's needs.

### **When is JOC Used?**

The JOC delivery method is particularly well suited to repetitive jobs and situations in which owners know that many small tasks will arise, but the timing, type of work, and quantity of work are unknown at the time the contract is signed. Many diverse tasks such as routine upgrades and renovations, remodeling, alterations, and minor new construction for a site are very efficiently handled using a single JOC contract. These jobs usually have minimal design requirements.

The JOC method should not be used for large, complex new construction projects that require extensive or innovative design or are likely to encounter changes and revisions during construction. In fact, some states require each job completed under a JOC contract to cost less than \$1,000,000.

### **Why is JOC Useful?**

There are several important advantages provided by Job Order Contracting. Projects done under JOC contracts are completed faster and incur fewer "soft costs," and the quality of the work is equal to or higher than that of projects done using DBB.

The most obvious benefit of JOC is the fact that it is not necessary to write separate contracts for each job. Since procurement procedures are major contributors to overhead and require significant staff resources, bypassing this procedure saves time and money.

Jobs get done faster and more cost effectively because the procurement costs are spread over many jobs. In fact, for most jobs done under JOC contracts, work begins 20 – 30 days after the need for work is communicated to the contractor, as compared to 180 days for DBB.

Another advantage is that the JOC contract establishes unit prices for labor and material, so once quantities are determined, it is fast and easy to arrive at a fixed price for each job. There are no price negotiations involved in implementing a JOC contract.

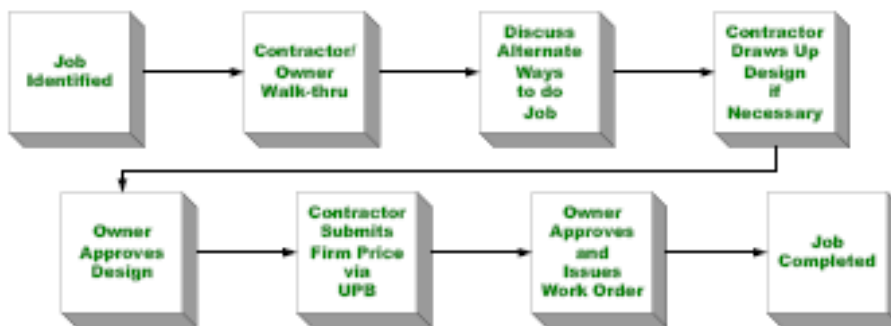
Additionally, because the owner establishes a long-term relationship with the Job Order Contractor, communication can be very efficient as the contractor becomes familiar with the needs and expectations of the owner. This long-term partnership, when established in a cooperative environment, leads to better quality and better value. JOC contracts are written with minimum and maximum dollar amounts of work that may be assigned under the contract. This situation creates a powerful incentive for the contractor to provide fast, high quality, reliable service to the owner. Owners are also motivated to establish positive relationships with the Job Order Contractors in order to reap the maximum benefits from the contract.

Finally, a very important feature of the JOC process is that the contractor is chosen by Qualifications Based Selection. This means that the choice will be based on experience with similar sites, knowledge and capability of personnel, and other factors that directly impact the quality of work delivered.

The JOC contractor typically uses his in-house design staff or an architect already under contract to quickly draw up plans for jobs as the need arises, saving substantial time.

### How is a JOC Contract Used?

The process of using a JOC contract is very fast and straightforward. When a need is identified, the owner contacts the JOC contractor and they walk through the site, define the extent of the project, and discuss alternate approaches to be considered. The contractor then draws up a design, if necessary, and a detailed project list, including all materials and labor needed. Using the chosen unit price book, the contractor can establish a firm price for the job. The owner reviews the proposal and issues an authorization to proceed. The process from request to authorization to begin work takes a very short time, sometimes as little as ten days to two weeks and not more than 30 days. The flow diagram below shows the steps of the process.



**Gary L. Aller** is the former Director of the Alliance for Construction Excellence (ACE) and was instrumental in the Arizona state legislative process incorporating Alternate Delivery Project Methods into law in the early 2000's, including JOC. ACE is an outreach/inreach organization that is part of the Del E. Webb School of Construction at Arizona State University.



1 build projects. In determining the amount of the honorarium, the  
2 public body shall (~~consider~~) recognize the level of effort required  
3 to meet the selection criteria.

4 **Sec. 7.** RCW 39.10.420 and 2017 c 136 s 1 are each amended to  
5 read as follows:

6 (1) (~~The following~~) **All** public bodies of the state of  
7 Washington are authorized to award job order contracts and use the  
8 job order contracting procedure(+

9 ~~(a) The department of enterprise services;~~

10 ~~(b) The state universities, regional universities, and The  
11 Evergreen State College;~~

12 ~~(c) Sound transit (central Puget Sound regional transit  
13 authority);~~

14 ~~(d) Every city with a population greater than seventy thousand  
15 and any public authority chartered by such city under RCW 35.21.730  
16 through 35.21.755;~~

17 ~~(e) Every county with a population greater than four hundred  
18 fifty thousand;~~

19 ~~(f) Every port district with total revenues greater than fifteen  
20 million dollars per year;~~

21 ~~(g) Every public utility district with revenues from energy sales  
22 greater than twenty-three million dollars per year;~~

23 ~~(h) Every school district;~~

24 ~~(i) The state ferry system;~~

25 ~~(j) The Washington state department of transportation, for the  
26 administration of building improvement, replacement, and renovation  
27 projects only;~~

28 ~~(k) Every public hospital district with total revenues greater  
29 than fifteen million dollars per year; and~~

30 ~~(l) Every public transportation benefit area authority as defined  
31 under RCW 36.57A.010)).~~

32 (2) (a) The department of enterprise services may issue job order  
33 contract work orders for Washington state parks department projects  
34 and public hospital districts.

35 (b) The department of enterprise services, the University of  
36 Washington, and Washington State University may issue job order  
37 contract work orders for the state regional universities and The  
38 Evergreen State College.

1 (3) Public bodies may use a job order contract for public works  
2 projects when a determination is made that the use of job order  
3 contracts will benefit the public by providing an effective means of  
4 reducing the total lead-time and cost for the construction of public  
5 works projects for repair and renovation required at public  
6 facilities through the use of unit price books and work orders by  
7 eliminating time-consuming, costly aspects of the traditional public  
8 works process, which require separate contracting actions for each  
9 small project.

10 **Sec. 8.** RCW 39.10.430 and 2007 c 494 s 402 are each amended to  
11 read as follows: *Belleve*

12 (1) Job order contracts shall be awarded through a competitive  
13 process using public requests for proposals.

14 (2) The public body shall make an effort to solicit proposals  
15 from certified minority or certified woman-owned contractors to the  
16 extent permitted by the Washington state civil rights act, RCW  
17 49.60.400.

18 (3) The public body shall publish, at least once in a statewide  
19 publication and legal newspaper of general circulation published in  
20 every county in which the public works project is anticipated, a  
21 request for proposals for job order contracts and the availability  
22 and location of the request for proposal documents. The public body  
23 shall ensure that the request for proposal documents at a minimum  
24 includes:

25 (a) A detailed description of the scope of the job order contract  
26 including performance, technical requirements and specifications,  
27 functional and operational elements, minimum and maximum work order  
28 amounts, duration of the contract, and options to extend the job  
29 order contract;

30 (b) The reasons for using job order contracts;

31 (c) A description of the qualifications required of the proposer;

32 (d) The identity of the specific unit price book to be used;

33 (e) The minimum contracted amount committed to the selected job  
34 order contractor;

35 (f) A description of the process the public body will use to  
36 evaluate qualifications and proposals, including evaluation factors  
37 and the relative weight of factors. The public body shall ensure that  
38 evaluation factors include, but are not limited to, proposal price  
39 and the ability of the proposer to perform the job order contract. In

1 evaluating the ability of the proposer to perform the job order  
2 contract, the public body may consider: The ability of the  
3 professional personnel who will work on the job order contract; past  
4 performance on similar contracts; ability to meet time and budget  
5 requirements; past performance on approved subcontractor inclusion  
6 plans; ability to provide a performance and payment bond for the job  
7 order contract; recent, current, and projected workloads of the  
8 proposer; location; and the concept of the proposal;

9 (g) The form of the contract to be awarded;

10 (h) The method for pricing renewals of or extensions to the job  
11 order contract;

12 (i) A notice that the proposals are subject to RCW 39.10.470; and

13 (j) Other information relevant to the project.

14 (4) A public body shall establish a committee to evaluate the  
15 proposals. After the committee has selected the most qualified  
16 finalists, the finalists shall submit final proposals, including  
17 sealed bids based upon the identified unit price book. Such bids may  
18 be in the form of coefficient markups from listed price book costs.  
19 The public body shall award the contract to the firm submitting the  
20 highest scored final proposal using the evaluation factors and the  
21 relative weight of factors published in the public request for  
22 proposals and will notify the board of the award of the contract.

23 (5) The public body shall provide a protest period of at least  
24 ten business days following the day of the announcement of the  
25 apparent successful proposal to allow a protester to file a detailed  
26 statement of the grounds of the protest. The public body shall  
27 promptly make a determination on the merits of the protest and  
28 provide to all proposers a written decision of denial or acceptance  
29 of the protest. The public body shall not execute the contract until  
30 two business days following the public body's decision on the  
31 protest.

32 (6) The requirements of RCW 39.30.060 do not apply to requests  
33 for proposals for job order contracts.

34 **Sec. 9.** RCW 39.10.440 and 2015 c 173 s 1 are each amended to  
35 read as follows:

36 (1) The maximum total dollar amount that may be awarded under a  
37 job order contract is four million dollars per year for a maximum of  
38 three years. Any unused capacity from the previous year may be  
39 carried over for one year and added to the immediate following year's

1 limit. The maximum annual volume including unused capacity shall not  
2 exceed the limit of two years. The maximum total dollar amount that  
3 may be awarded under a job order contract for the department of  
4 enterprise services, counties with a population of more than one  
5 million, and cities with a population of more than four hundred  
6 thousand is six million dollars per year for a maximum of three  
7 years. The maximum total dollar amounts are exclusive of Washington  
8 state sales and use tax.

9 (2) Job order contracts may be executed for an initial contract  
10 term of not to exceed two years, with the option of extending or  
11 renewing the job order contract for one year. All extensions or  
12 renewals must be priced as provided in the request for proposals. The  
13 extension or renewal must be mutually agreed to by the public body  
14 and the job order contractor.

15 (3) A public body may have no more than (~~two~~) three job order  
16 contracts in effect at any one time, with the exception of the  
17 department of enterprise services, which may have six job order  
18 contracts in effect at any one time.

19 (4) At least ninety percent of work contained in a job order  
20 contract must be subcontracted to entities other than the job order  
21 contractor. The job order contractor must distribute contracts as  
22 equitably as possible among qualified and available subcontractors  
23 including certified minority and woman-owned subcontractors to the  
24 extent permitted by law as demonstrated on the subcontractor and  
25 supplier project submission, and shall limit subcontractor bonding  
26 requirements to the greatest extent possible.

27 (5) The job order contractor shall publish notification of intent  
28 to perform public works projects at the beginning of each contract  
29 year in a statewide publication and in a legal newspaper of general  
30 circulation in every county in which the public works projects are  
31 anticipated.

32 (6) Job order contractors shall pay prevailing wages for all work  
33 that would otherwise be subject to the requirements of chapter 39.12  
34 RCW. Prevailing wages for all work performed pursuant to each work  
35 order must be the rates in effect at the time the individual work  
36 order is issued.

37 (7) If, in the initial contract term, the public body, at no  
38 fault of the job order contractor, fails to issue the minimum amount  
39 of work orders stated in the public request for proposals, the public  
40 body shall pay the contractor an amount equal to the difference

1 between the minimum work order amount and the actual total of the  
2 work orders issued multiplied by an appropriate percentage for  
3 overhead and profit contained in the contract award coefficient for  
4 services as specified in the request for proposals. This is the  
5 contractor's sole remedy.

6 (8) All job order contracts awarded under this section must be  
7 signed before July 1, 2021; however the job order contract may be  
8 extended or renewed as provided for in this section.

9 (9) Public bodies may amend job order contracts awarded prior to  
10 July 1, 2007, in accordance with this chapter.

11 **Sec. 10.** RCW 39.10.450 and 2012 c 102 s 2 are each amended to  
12 read as follows:

13 (1) The maximum dollar amount for a work order is ((three)) five  
14 hundred ((fifty)) thousand dollars, excluding Washington state sales  
15 and use tax.

16 (2) All work orders issued for the same project shall be treated  
17 as a single work order for purposes of the dollar limit on work  
18 orders.

19 (3) No more than twenty percent of the dollar value of a work  
20 order may consist of items of work not contained in the unit price  
21 book.

22 (4) Any new stand-alone permanent(~~(, enclosed building space))~~  
23 structure constructed under a work order shall not exceed ((two))  
24 three thousand gross square feet.

25 (5) A public body may issue no work orders under a job order  
26 contract until it has approved, in consultation with the office of  
27 minority and women's business enterprises or the equivalent local  
28 agency, a plan prepared by the job order contractor that equitably  
29 spreads certified women and minority business enterprise  
30 subcontracting opportunities, to the extent permitted by the  
31 Washington state civil rights act, RCW 49.60.400, among the various  
32 subcontract disciplines.

33 (6) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,  
34 each work order issued shall be treated as a separate contract. The  
35 alternate filing provisions of RCW 39.12.040(2) apply to each work  
36 order that otherwise meets the eligibility requirements of RCW  
37 39.12.040(2).

38 (7) The job order contract shall not be used for the procurement  
39 of architectural or engineering services not associated with specific

1 work orders. Architectural and engineering services shall be procured  
2 in accordance with RCW 39.80.040.

3 (8) Any work order over three hundred fifty thousand dollars,  
4 excluding Washington state sales and use tax, and including over six  
5 hundred single trade hours shall utilize a state registered  
6 apprenticeship program for that single trade in accordance with RCW  
7 39.04.320. Awarding entities may adjust this requirement for a  
8 specific work order for the following reasons:

9 (a) The demonstrated lack of availability of apprentices in  
10 specific geographic areas;

11 (b) A disproportionately high ratio of material costs to labor  
12 hours, which does not make feasible the required minimum levels of  
13 apprentice participation;

14 (c) Participating contractors have demonstrated a good faith  
15 effort to comply with the requirements of RCW 39.04.300 and  
16 39.04.310; or

17 (d) Other criteria the awarding entity deems appropriate.

18 **Sec. 11.** RCW 39.10.470 and 2014 c 19 s 2 are each amended to  
19 read as follows:

20 (1) Except as provided in subsections (2) and (3) of this  
21 section, all proceedings, records, contracts, and other public  
22 records relating to alternative public works transactions under this  
23 chapter shall be open to the inspection of any interested person,  
24 firm, or corporation in accordance with chapter 42.56 RCW.

25 (2) Trade secrets, as defined in RCW 19.108.010, or other  
26 proprietary information submitted by a bidder, offeror, or contractor  
27 in connection with an alternative public works transaction under this  
28 chapter shall not be subject to chapter 42.56 RCW if the bidder,  
29 offeror, or contractor specifically states in writing the reasons why  
30 protection is necessary, and identifies the data or materials to be  
31 protected.

32 (3) ~~((Proposals submitted by design-build finalists))~~ All  
33 documents related to a procurement under RCW 39.10.330 are exempt  
34 from disclosure until the notification of the highest scoring  
35 finalist is made in accordance with RCW 39.10.330~~((+5+))~~ (6) or the  
36 selection process is terminated, except as expressly required under  
37 RCW 39.10.330(3).