

Chapter 3

TYPES OF CONTRACTS

OGS D&C utilizes several types of contracts in the construction contracting process. Rapid response contracts (E's, J's and M's) are expedited through the design, bid and award phases. While standard contracts (40,000 series and Q's) are usually more complex and have a longer schedule due to their submission requirements, reviews and approvals. A comparison of contracts and a brief description of each type are described in this chapter.

Comparison of Contract Types						
Category		Less			Greater	
		Rapid Response			Standard	
		E	J	M	Q	40,000
Project Initiation		BDC 318	BDC 318 BDC 153, Div. Design	BDC 318	BDC 153	BDC 153
Limitations	\$ Amount	600K	500K / WO	None	None	None
	Wicks Law	Yes	Yes	Yes	Yes	Yes
Contract Type		Lump Sum T&M Cost +	Lump Sum from Unit Pricing	Lump Sum	Lump Sum	Lump Sum
Design Comparison	Design Time (if required)	0 - 2 weeks	2 - 4 weeks	6 - 12 weeks	8 - 20 weeks	Over 16 weeks
	Designer (NA = Not Applicable)	NA / EIC / Consultant / In-house	NA / EIC / Consultant / In-house	Consultant / Some In-house assist	In-house / Consultant	In-house / Consultant
	Scope Definition	Yes	Yes	Yes	Yes	Yes
	Program Report and Approval	No	No	Optional	Optional	Yes
	SD & DD Phases	No	No	No	Optional	Optional
	100% Sub Phase	No	No	Yes	Optional	Yes
	Final Documents	Yes / No / Partial	Yes / No / Partial	Yes	Yes	Yes
	Final DOCCS - Client Approval	No	No	No	BDC 153 Pre-approved	Yes
Bidding Comparison	Bid Process	Qualification Based List	WO to On-Call Contractor	Publicly Bid	Publicly Bid	Publicly Bid
	Print / Advertise Time	None	None	1 - 2 weeks	3 weeks	3 weeks
	Bid Time	0 - 2 weeks	2 - 4 weeks (proposal)	3 - 4 weeks	3 - 4 weeks	4 + weeks
	Award Time	Notice to Proceed	Notice to Proceed	2 - 4 weeks	3 - 6 weeks	3 - 6 weeks
Construction Comparison	Construction	Typical	Typical	Typical	Typical	Typical
	Scope Change	CO	WO modification	CO	CO	CO
	Payments	Typical	Typical (summary)	Typical	Typical	Typical

A. STANDARD CONTRACT

1. The Standard Contract is the type most commonly used by OGS D&C. They are fixed-price contracts, meaning the contractor agrees to perform the work for one fixed price regardless of actual cost. Standard Contracts are publicly advertised and competitively bid. They are usually awarded to the lowest responsible and reliable bidder, however, the state may choose to reject all bids and re-advertise for new bids. The system for producing project manuals was designed around this type of contract. Additional documents were developed for other types of contracts and for modifications required by various Client Agencies. Most modifications take place in the bidding and contracting requirement sections rather than in the technical specifications. Some points to remember while assembling documents for a Standard Contract are the following:
 - a. Drawings and Specifications are separate documents. Do not include specification items on the drawings.
 - b. The Wicks Law applies to most projects. See item K in this chapter and Chapter 9.3 Multiple Prime Contracts Guide (Wicks Law) for specific requirements.
 - c. As a general rule, projects require a program report with an estimate and 100% submission with a fully detailed estimate for each trade.
 - d. Drawing size will be the standard 24" x 36" format unless bound in the Project Manual.
 - e. For more detailed information on document requirements, review the other chapters in this Design Procedures Manual.
 - f. Contact the project OGS Team Leader (TL) for deviations from these and other standard procedures.
 - g. Some variations of Standard Contracts can include Q and M projects.

B. Q PROGRAM CONTRACT (primarily DOCCS)

1. Q projects are identified by a project number beginning with the letter Q (e.g. Q1234). They are intended for single trade with scope that is clear, straightforward and can be accomplished quickly. When DOCCS authorizes a Q project it is with the understanding that funding is in place and authorization has also been given to bid and award the work.
2. Due to the straightforward nature of a Q project most project milestones are not applicable. Although a Field Trip is usually necessary, neither the Program Report nor 100% Submission milestones are required. The Division of Construction Constructability Review Group should be provided a copy of the contract documents as soon as they are progressed to a point that will allow for review. The project should not be delayed while waiting for a response.
3. On rare occasions, Q projects can have a Program Submission and/or 100% Submission if deemed necessary by the TL. If a project requires both, it should be changed to a 40,000 series project.
4. Q projects do not have a higher priority than other DOCCS work.

C. EMERGENCY CONTRACT (administered by the Division of Construction)

1. An emergency contract is usually bid on a lump sum or cost-plus/percentage fee basis, and is given priority over ordinary work except when instructions are received to the contrary. Most emergency contracts are prepared by Design and Construction's Division of Construction Field Staff because of the urgent need to resolve a life safety or critical function risk. Usually, there is time to investigate the circumstances, arrange for written or telephone bids and assign the work to a low bidder. When design expertise is required, a Consultant/Designer may be asked to prepare the documents (tech specs and/or drawings only). In this case, the Director of Division of Construction should always be consulted regarding preparation of the Front-End Documents.
2. The documents for an emergency contract may be similar to a standard contract with the following exceptions:
 - a. Advertisement for Bids is not required.
 - b. Instructions to Bidders is not required.
 - c. Bid security is not generally required.
 - d. Neither performance bonds nor labor and material bonds are required.
 - e. Liquidated damages are not required.
3. As soon as the PM is aware that an emergency may be declared they should contact the Division of Construction immediately and notify the Regional Supervisor.
4. All emergency declarations are distributed to the appropriate Business Units. If the TL or the PM has any knowledge of ongoing studies, Design of Scope or has met with the Client, that individual should contact or email the Division of Construction.
5. The contract value limit for emergency contracts was raised from \$300,000 to \$600,000 in April 2015.

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D. M PROGRAM CONTRACT (administered by the Division of Construction)

1. All "M" Projects are initiated by client submission of an Emergency Declaration (BDC 318). A project is directed to the "M" Program when it does not meet the legal definition of "emergency", requires a design to properly implement the needed repair/replacement or when construction costs are anticipated to exceed the \$600,000 limitation on Emergency Contracts.
2. The client provides concurrence when an "M" project is initiated with the understanding that, as an "M", it will be handled in an expedited manner. When the client agrees to having an emergency request go to the "M" program, their opportunity for various milestone project reviews is waived as are any

requirements on their part to provide additional project approvals for design and bidding.

3. In many instances, “M” projects are single-trade, straightforward projects with clearly defined scopes. In these cases, the initial consultant site visit can confirm existing conditions and required scope, and the fee can be easily agreed upon and design authorized quickly. There may be occasions where the original emergency request is so vague that a more detailed follow-up investigation and program report may be required. But in keeping with the general “M” requirements, all is handled on a more expedited schedule.
4. “M” Projects can be multiple-trade contracts. There are no dollar limitations on “M” contracts. Since they are publicly advertised and bid, they are subject to all requirements of the Public Building and State Finance Laws and must adhere to Wicks Law limitations. To help achieve a rapid project turnaround, the M Project managers have utilized alternate delivery methods and in some cases have prepared abbreviated contract documents. The projects must, however, be “biddable” and “buildable”. Other shortcuts include, but are not limited to, the following:
 - a. Projects have no required preliminary design or field check review process.
 - b. No additional Budget authorizations required from the client beyond initial authorization.
 - c. Abbreviated technical specs may be provided on the drawings with TL approval.
 - d. Prevailing Wage Rates are requested from the Dept. of Labor at time project is initiated.
 - e. Shortened Advertisement and Bidding periods are utilized.
 - f. Have been authorized by CADM to select project bid dates.
 - g. Although a PM is assigned to each project, a “team” management approach is utilized so that there is sufficient familiarity with all projects within the section. Each PM can help advance a given project in the absence of the assigned PM.

E. JOB ORDER CONTRACT (administered by the Division of Construction)

1. A Job Order Contract (JOC) is an indefinite quantity contract whereby the contractor(s) perform a series of individual real property repair and construction projects at different locations within a defined Geographic Contract Area.
2. Under a JOC contract, the Contractor furnishes all management, documentation, scope definition services, labor, materials and equipment needed to perform the Work. Ordering Work is accomplished by means of issuance of individual Job Orders against the Contract.
3. The State has published a Construction Task Catalog containing a series of work items with pre-established Unit Prices and corresponding Technical Specifications. The Contractor bids Adjustment Factors to be applied to these pre-established Unit Prices.

4. As individual projects are identified, the scope of work is discussed with a JOC Coordinator and/or EIC, a Facility and/or Client Representative and the Contractor at a Joint Scope Meeting. Following the Joint Scope Meeting, the State provides the Contractor with a draft Detailed Scope of Work for review by the Contractor. Once the Detailed Scope of Work is agreed upon, the State issues a Request for Proposal. The Contractor then develops a Job Order Cost Proposal using construction tasks from the Construction Task Catalog necessary to complete the Detailed Scope of Work. The price paid by the State for an individual Project is determined by multiplying the pre-established Unit Prices of the necessary construction tasks by the appropriate quantities and by the appropriate Adjustment Factor(s).
5. The State reviews the Job Order Cost Proposal, and if satisfied, may issue a Job Order. The resulting price is a lump sum, fixed price for the completion of the Detailed Scope of Work. Each successive Job Order is developed in a similar manner. At any given time, the Contractor is expected to be joint scoping and developing concurrent Job Order Cost Proposals; as well as concurrently performing Work on multiple Projects in the field.
6. The Contract Term of the Contract is one (1) year in duration or when an amount equal to the Maximum Contract Value has been ordered, whichever comes first. There are two (2) optional Contract Terms. Both the State and the Contractor must mutually agree to extend the Contract for any additional Contract Terms. Each additional Contract Term is one (1) year in duration or when an amount equal to the Maximum Contract Value has been ordered, whichever comes first.
7. The Minimum Contract Value for all contracts is \$50,000. The Contractor is guaranteed to receive Job Orders totaling at least \$50,000 issued during the base Contract Term. The Maximum Contract Value for each Contract will vary dependent upon the trade (C, H, E, P). The Contractor may be issued Job Orders totaling the Maximum Contract Value during any Contract Term. The Contractor is not guaranteed to receive this value of Job Orders. The State has no obligation to issue Job Orders in excess of the Minimum Contract Value.
8. It is not the intent of the State to routinely procure Job Orders less than \$15,000 in value. However, on occasion (for example, Changes in Work on a site where the Contractor is already working) the State reserves the right to do so on an infrequent basis. It is not the intent of the State to procure Job Orders in excess of \$500,000.
9. The total project cost using a Job Order shall not exceed the \$500,000 threshold. If the threshold value will be exceeded then the project is required to be bid as a standard contract. JOCS shall not be used as a project contract method to progress work that cannot stand alone from the work of concurrent, separately procured projects.

F. UNIT PRICE CONTRACT

1. Unit Price Contracts are used when the extent of work is not exactly determinable

at the time of bidding. They are actually a combination of Fixed Price and Unit Price Contracts, as described below.

2. The purpose of the unit price format is to establish a method of paying for work on an assigned unit basis when the work is not accurately quantifiable, e.g. cubic yards of fill for swampland, or, lineal feet of new piping for connection to an existing underground line of unknown location. The bidder is given a schedule of the items of work along with corresponding estimated unit quantities. This schedule, namely the Unit Price Schedule, is contained in the Bid Form. The Contractor is required to submit a unit price bid for each item of work shown in the Unit Price Schedule. The total cost of the unit price portion of the work is calculated by multiplying the bid price submitted for each item by the corresponding quantity given in the schedule, and then adding all to form a sum total.
3. The bidder is also required to provide a fixed price for the remainder of the work. The fixed price includes the cost of the General Conditions, General Requirements, and all other work required by the documents that are not listed in the Unit Price Schedule.
4. The total bid price for the Contract is the sum of the unit and fixed price costs.
5. The Bid Form, complete with the unit price schedule, must be included with the 100% Submission Phase Project Manual. In addition to the Bid Form, Supplementary Instructions to Bidders - Unit Prices (002215) must be included. All items of work to be performed on a unit price basis must be listed on the unit price schedule attached to the 004143 Bid Form, along with the estimated quantities required and the specification section number of each item for cross referencing. The remaining items on the form will be filled in by the bidder.
6. Payment for unit price work must be accounted for by a payment clause in Section 012977 - Measurement and Payment. Payment paragraphs should be written to state: "Payment for the Work of this Section will be made at the Contract unit price per...." "Work of this Section" will tie the unit prices to the whole section thereby precluding the need to enumerate all unit prices individually. Certain sections, however, i.e., Section 310000 - Earthwork, require statements specifying payment limit lines.
7. Management of a Unit Price Contract requires a clear and comprehensive understanding of the Contract documents. First, the Project Manual will specify definitions for each and every item of unit work, as well as provide corresponding product and execution specifications. The Director's Representative (EIC) must inspect all work activities and strictly categorize each in one of the defined items of unit work. If the work activity does not conform to any of the definitions, then the EIC must advise the Contractor that the work being performed is a non-unit price activity and a method of payment must be negotiated i.e. a fixed price agreement, if the work in question is deemed necessary for completion of the Work. Finally, drawings, when included, will show the location and details of the Work.
8. The Contractor Project Superintendent should submit a daily unit price sign-off

sheet for EIC review and acceptance at the end of each workday. The EIC should compare the submitted quantities with those recorded during field inspection, and resolve any noted discrepancies with the Superintendent. When the sign-off sheet is found acceptable, both the EIC and Superintendent should sign and keep copies for their record.

G. COST-PLUS CONTRACT

1. A “cost-plus” contract is generally used only for emergency projects, projects that must be started before the scope of the work is fully defined or for long-term projects requiring small amounts of work at different locations. The contractual/legal requirements for this type of contract require special treatment with the direct involvement of the Director of Contract Administration. Under the terms of this contract, the contractor is paid the actual cost of labor, materials, equipment, etc., based upon proper documentation of those costs, plus a fee for contract administration, overhead, profit, etc. The terms “cost” and/or “fixed fee” or occasionally “percentage fee” are defined in the Supplementary Conditions. The actual estimated cost of the work, rather than the usual estimate range, is stated in the Advertisement for Bids and on the Bid Form. Bids are submitted for only the “fee” based upon the estimated cost of the work.

H. SOLE-SOURCE CONTRACT

1. This method of contracting for work is rarely used because it does not meet the normal legal requirement for competitive bidding. The contract fee is negotiated beforehand, and the contract is awarded to the “sole-source” contractor. Therefore, preliminary approval for this type of contract must be obtained from the Director of Contract Administration. The Office of the State Comptroller will approve a sole-source contract *only* when it can be documented that only one contractor is capable of doing the required work.
2. The documents for a sole-source contract are similar to a standard contract with the following exceptions:
 - a. Advertisement for Bids is not required.
 - b. Instructions to Bidders are not required.
 - c. The Bid Form is not required.
 - d. Usually only 25 copies of the contract documents are printed, and distribution is handled by Contract Administration.

[NOTE: Sole-source procurement of items which are part of the work for a project can be included in a standard contract by means of a Cash Allowance. This is described in further detail in Chapter 5.2 – Project Manuals. The same rules apply in terms of documentation and prior approval.]

I. CONSTRUCTION ACCELERATION INCENTIVE CONTRACT

1. Time is the essence for every Contract. The Specified Completion Date, however, is sometimes modified and extended for valid reasons such as change orders, delay in delivery of materials, or for other reasons specified in Article 13 of the General Conditions. The Construction Acceleration Incentive (CAI) contract does

not consider any such extension to the Specified Completion Date. The goal behind the CAI is to compel the contractor to make the best effort possible to complete the Work ahead of schedule or by an aggressively scheduled date and with acceptable quality, as well as to influence and cause the others dependant on the contractor to make a similar effort.

2. A CAI is a payment earned by a contractor as compensation for achieving expedited project completion above and beyond the basic requirements of a contract. OGS has successfully used incentives to complete projects ahead of schedule and to complete critical project phases in a manner to minimize impacts on operating facilities.
3. There are a variety of CAI Contract structures that can be developed during design to support the intent of the construction acceleration / completion requirements for a specific project. A CAI Contract is typically structured to pay a set premium for each day a contract milestone is met in advance of the contract's specified milestone completion date, up to some maximum premium amount. An alternative CAI Contract structure could be a set premium amount tied to a specific milestone or phase completed. In all types of CAI Contract structures, milestone completion criteria and/or substantial completion should be clearly defined in the contract documents.
4. The amount of premium is based on a number of factors. The most significant factor is an assessment of the value to the owner of the benefits of early completion. Benefits might include avoided costs for temporary provisions (for example a temporary kitchen, temporary lease, temporary chillers, etc.); avoided penalties (environmental fines, court-ordered fines, etc.); or avoided costs related to support of an ongoing construction project (construction management costs, fire watch costs, security coverage, tenant disruption, etc.) The CAI benefits may allow the owner to gain beneficial occupancy set by an aggressive critical date. The CAI is earned when the milestone is achieved; however, the incentive is not paid until the project reaches final completion. Significant liquidated damages would typically accompany a CAI, justified by the same analysis of owner's costs used to justify the CAI.
5. The specifications, 011000 Summary of Work defines the CAI Contract structure milestones and 007305 Supplementary Conditions – Construction Acceleration Incentives and Liquidated Damages defines the payment value and method of the CAI Contract.
6. A CAI Contract can be recommended by the PM, BUL, EIC, Area or Regional Supervisor. However, the CAI needs to be approved by the Design and Construction Directors and the Client. The Quality Manager shall review the CAI Contract scope and milestones prior to forwarding to the CADM, Construction and Design Directors for final approval of the specifications.
7. When change orders are issued under a CAI Contract, the contractor is expected to perform the work at the same time with the scheduled contract work by using additional manpower. If this is not possible, then the contractor should work

overtime or second shift as necessary to complete the change order work during the time allowed for the contract work. The additional costs required to incorporate the changes into the Work should be reimbursed to the contractor, including labor costs for overtime premiums and shift differentials. If the delay is due to other reasons, the contractor is expected to take the initiative and responsibility for resolving such delays by virtue of his CAI.

8. A CAI is offered when the client is in urgent need of the contract work. It is important that every effort is made to provide timely responses to the contractor's inquiries and submittals. When possible, field staff should give direct responses to all questions and resolve problems in the most expeditious manner possible. The EIC must also work closely with the facility representative to assure that the project activities conform to the client's needs.
9. The EIC must take a stern but fair approach to managing a CAI project. The project schedule forms the road map for the project and must be strictly enforced by the EIC. The actual work progress and quality must be closely monitored and prompt corrective action must be dictated to correct deficiencies when necessary. A proactive approach must be taken in inspecting the quality of the work in progress and deficiencies must be brought to the contractor's attention before they become widespread. It is recommended that materials be inspected for compliance with approved submittals prior to installation, and that benchmarks are established for work activities where possible. Schedule deficiencies must also be brought to the contractor's attention as soon as possible, and the contractor must take prompt action in accelerating deficient activities as necessary to regain the schedule.
10. All CAI projects are put on the OGS D&C Priority Projects List which is reviewed at the Design and Construction's Bi-Weekly Construction Review meetings.
11. It is essential that the EIC maintain and enhance communication between all parties, including the Contractors, the Client, the Consultant/Designer, the administrator, and the construction supervisor. This is accomplished by holding frequent site meetings and by generating substantial correspondence. It is recommended that weekly project coordination meetings be held with the principals and field representatives of each of the aforementioned parties. In addition, daily "tool-box" meetings should be held between the field personnel- such as the contractor and subcontractor superintendents, and OGS inspection and management personnel. Correspondence should be transmitted electronically when possible, otherwise, faxing the correspondence and following with a hard copy via US mail or overnight delivery is necessary.
12. Contract interpretation should follow normal channels where possible. If, however, the work progress is contingent upon any such interpretation, the EIC is expected to render a prompt determination and provide direction. Risks should be taken, but minimized. The resultant impact is also a consideration. The primary objective is to complete the project on time, but not without consideration for work quality and the budget.

J. WICKS EXEMPT CONTRACTS

1. Projects with costs lower than the thresholds noted below shall be considered for Wicks Exemption and a single contract shall be utilized which includes the work of multiple trades. The use of a single contract is highly recommended to reduce OGS's field staff management, oversight and coordination effort associated with multiple contractors on a project site. However, the PM should use caution when the estimated construction value is very close to the threshold levels. If the project bid exceeds the threshold value then the project will need to be repackaged and rebid as a multi-prime project. It is highly recommended that these projects be organized by C, H, P and E subcontractor trade disciplines.
 - a. \$3 million in Bronx, Kings, New York, Queens and Richmond counties
 - b. \$1.5 million in Nassau, Suffolk and Westchester counties
 - c. \$0.5 million in all other counties(In rare instances this requirement can be waived using a Project Labor Agreement. See Section 222 Project labor agreements).
2. Wicks-Exempt Projects require a completed BDC 59 Contractor's List of Subcontractors to be filled out and submitted (included in a separate, sealed envelope) in accordance with Document 002220, Supplemental Instructions to Bidders – Wicks-Exempt. Any changes by the low bidder to subcontractors or agreed-upon amounts to be paid to each subcontractor shall require the approval of the Contracting Officer.
3. See Chapter 9.3 Multiple Prime Contracts Guide for more related information.

K. INMATE LABOR CONTRACT (DOCCS only and rarely used)

1. These are special contracts where the work is performed by DOCCS inmates through the DOCCS Division of Industries. The commissioners of both DOCCS and OGS must approve a project as an inmate labor contract. A project may be designated "inmate labor" at any time during the design process.
2. The primary differences between an "approved inmate labor" and a standard contract are:
 - a. The contract designation (suffix) is always "K". If the project was started as a standard contract the "K" suffix does not have to replace the existing suffix, the "K" suffix would only be used on the cover, certification page, and any new or reedited sections.
 - b. The bidding requirements, contract forms, and conditions of the contract are not included in the project manual. (If Document 003126 - Existing Hazardous Material Information is required it is listed in the table of contents under the introductory information.)
 - c. Sections 012100 and 015633 and BDC 450 and BDC 451 forms are not included in the project manual.
3. See [Inmate Labor Procedures](#) for additional information.

L. LABOR ONLY CONTRACT



1. This type of contract is used *only* when time constraints do not permit the preparation of proper contract documents and the scope of the work is indefinable by drawings or a narrative description. If this type of contract must be used, the following requirements apply for the Front End Documents:
 - a. The actual estimate, instead of an estimate range, is to be included in the Advertisement for Bids.
 - b. The period of time (calendar days) when labor is to be furnished is used instead of project “days of completion.” This should also be included in the Bid Form.
 - c. Technical specifications may be included when necessary.

Revision History:

Rev	Date	Description	Reviewed by:	Approved by:
0	05/30/12	Last revised date		
1	09/05/13	Revision to Construction Acceleration Incentive Contracts, added Wicks Exempt Contracts and other minor revisions	Parnett	Parnett
2	12/13/13	Minor revisions	Parnett	Parnett
3	3/17/15	Minor revisions	Dostie	Parnett
4	4/14/15	Raised emergency contract value from \$300K to 600K	Parnett	Parnett
5	5/10/16	Deleted Short Form Contract references	Parnett	Ruppert