



**STANDARD CONSTRUCTION OPERATING PROCEDURE**

City of New York

Department of Design and Construction  
Division of Infrastructure Bureau of Construction

**SCOP.....: 02 -003G**

**CATEGORY..: Administrative**  
**Subcategory : Contract**

**SUBJECT: REVISED STANDARD  
CONSTRUCTION CONTRACT**

Keywords ...: Revised Contract

**APPROVED:**

*Assistant Commissioner - William F. Lipski, P.E.*

Supersedes.. : N/A

Supplements... : N/A

Sheet..... : 1 of 1

Issue Date.... : April 2, 2002

A new Standard Construction Contract is now in effect. Attached is a summary of significant changes that were made to the contract. Please review your contracts to determine if the new version of the Standard Construction Contract is included, and if so comply with the new language. The old version of the Standard Construction Contract will still apply to those projects in which it is included.

Regarding the attached revisions, please note the following:

1. The old Article 17 *Occupation or Use Prior to Completion* is now Article 16. When issuing Occupation or Use Prior to Completion Acceptance letters, ensure that the correct article for your contract is referenced.
2. Article 26 *Methods of Payment for Extra Work* has been revised. The overhead and profit on non-contractor-owned equipment has been revised to 5%. Until such time that the DDC change order forms are revised, non-contractor-owned equipment can be treated the same way that subcontractors are on the change order estimate forms.
3. Article 26 *Methods of Payment for Extra Work* also states that insurances required by schedule A are to be included in the overhead. However, DDC has issued an amendment to this that states that workers compensation insurance will be paid for and is not included in the overhead.



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

**MEMORANDUM**

**TO:** All Construction Agencies

**FROM:** Gary Geiersbach  
Director, Mayor's Office of Construction

Dan Muller  
Chief, Division of Contracts and Real Estate  
New York City Law Department

**DATE:** August 28, 2000

**SUBJECT:** Revised Standard Construction Contract

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Revisions to the Standard Construction Contract have been completed. The new edition, titled **CITY OF NEW YORK STANDARD CONSTRUCTION CONTRACT, OCTOBER 2000**, is to be used in all construction contract solicitations advertised after October 1, 2000. It has been provided in both hard copy and on disc in Microsoft Word 97.

Agencies may not make any changes to the text of this edition, but are invited to forward any suggested changes to the Law Department and the Mayor's Office of Construction. Periodic changes will be accomplished via supervening addenda, numbered, dated and referenced to the current edition of the Standard Contract following review and approval by the Law Department and the Mayor's Office of Construction. These addenda will then be incorporated into the bid documents directly in front of the Standard Contract. New editions of the Standard Contract will be issued whenever the number of addenda becomes unwieldy or when it becomes advantageous to issue one.

If an agency wishes to modify any portion of the Standard Contract for a particular solicitation, the agency must obtain the prior approval of the Law Department.

Also attached is a summary of significant changes made to the document.

If you have any questions, please contact either office.



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
OFFICE OF CONSTRUCTION

75 Park Place • 7th Floor  
New York, NY 10007  
Telephone: (212) 788-2502  
Fax: (212) 788-2519/2597

GARY GEIERSBACH  
Director

**MEMORANDUM**

**TO:** ALL CONSTRUCTION AGENCIES

**FROM:** GARY GEIERSBACH

**DATE:** AUGUST 28, 2000

**RE:** REVISED STANDARD CONSTRUCTION CONTRACT  
SUMMARY OF CHANGES

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The City's Standard Construction Contract has been revised after extensive discussions between the Mayor's Office of Construction, the Law Department, the Comptroller's Office, and Mayoral Agencies. The following is a summary of significant changes that have been made.

If you have any questions, please contact my office.

**Article 1. The Contract**

- Consolidates a list of documents that are deemed part of the agreement.
- Should any conflict occur between the drawings and specifications, the Contractor shall be deemed to have estimated the most expensive way of doing the work.

**Article 2. Definitions**

- Adds the following definitions: "Agency Chief Contracting Officer," "City Chief Procurement Officer," "Contract," "Days," "Engineering Audit Officer," "Federal-Aid Contract," "Final Approved Punch List," "Payroll Taxes," "Procurement Policy Board," and "Substantial Completion."
- Revises definition of "Laws" to include common law and revises definition of "Work" to provide greater specificity.
- All words defined in Article 2 are boldfaced and the first letter of the word capitalized throughout the document.

**Article 5. Compliance With Laws**

- The Contract is subject to the PPB Rules in effect at the time of bid opening and not the PPB Rules in effect on August 1, 1990.

**Article 6. Inspection**

- Clarifies that corrective work is contract work and not “extra work.”

**Article 7. Protection of Work and of Persons and Property**

- Ensures that the City does not waive partial indemnification if the City is precluded from receiving full indemnification.
- The contractor is obligated to assume the cost of the defense of the City with regard to all claims.

**Article 9. Progress Schedules**

- Approval by the City of a progress schedule which is shorter than the time allotted under the contract shall not create any liability for the City if the approved project schedule is not met.
- The contractor will not be paid until the progress schedule is submitted ~~and approved~~.

**Article 11. Notice of Conditions Causing Delay and Documentation of Damages Caused by Delay**

- Clarifies and reinforces the requirement that a contractor must document delay claims.

**Article 12. Coordination with Other Contractors**

- Ensures that the City does not waive partial indemnification if the City is precluded from receiving full indemnification.
- Prohibits the contractor from making claims against the City for damages relating to any action or non-action of any contractor, or any direction or lack of direction given by the City regarding coordination.

**Article 14. Completion and Final Acceptance of the Work**

- New article includes the provision that substantial completion will not be issued until the punch list has been approved.

**Article 16. Occupation or Use Prior to Completion**

- Clarifies existing language that gives the Commissioner the ability to takeover, use, occupy, or operate any part of the work prior to final acceptance.

**Article 17. Subcontracts; Article 20. Payment Guarantee**

- Accommodates situations where performance and payment bonds are not required.

**Article 21. Retained Percentages**

- Requires 10% retainage on contracts where payment and performance bonds are not required and the awarded price is less than \$250,000.
- On contracts where payment and performance bonds are not required and the awarded price exceeds \$250,000, the Commissioner shall set the amount of retainage, not to exceed 10%.

### **Article 22. Insurance**

- Requires that the City, as additional insured, be covered for any bodily injury or property damage.
- Requires contractor to provide one copy of the Certificate of Insurance, for each policy required under the Contract, to the Commissioner within 10 days of award. Conforms to ODC/Comptroller Directive No. 2 requiring agencies to submit copies of certificates when submitting the contract package for registration.
- Requires a broker warranty on the certificates.

### **Article 25. Changes**

- Adds language alerting the Contractor to the pre-audit of change order payments by the EAO and post-audit by the Comptroller.
- Eliminates language regarding the recoupment of costs if an audit reveals that the contractor's costs were inaccurately stated.
- Increases the change order threshold for approval by ODC to conform to the recent PPB Rule amendment.

### **Article 26. Methods of Payment for Extra Work**

- Revises list of items which are included within overhead.
- Incorporates ODC Directive 61 with respect to overruns of unit price items. Currently, a copy of the Directive is in the contract, most likely in the Information for bidders. This can now be removed.
- On fixed price change orders, the price to be paid shall be the fair and reasonable cost of the items listed in 26.2
- Eliminates payments for the types of insurance required by Article 22 and Schedule A, which is included in overhead.
- Adds item to pay for insurance which is different than the types required by Article 22 and Schedule A.
- Eliminates language regarding payments to be made to labor organizations, and adds "supplemental benefits" to the direct labor item, to conform to language in Labor Law 220.
- Eliminates "gas, oil, coal, etc." to be paid on plant and equipment rental.
- Eliminates the entire section on "Cost and Pricing Data."
- Provides for 5% overhead and profit on rental of non-contractor-owned plant and equipment.

### **Article 27. Resolution of Disputes**

- Conforms to recent changes in the PPB Rules.

### **Article 28. Record Keeping for Extra or Disputed Work**

- Title changed from "Performance of Extra or Disputed Work" to more accurately reflect the purpose of the Article.

**Article 29. Omitted Work**

- Revises the formula for calculating the amount of the credit to the City for omitted work. Under the new formula, the value of the credit is based upon a pro rata portion of the bid price and includes the contractor's overhead and profit.

**Article 30. Notice and Documentation of Costs and Damages; Production of Financial Records**

- Requires documentation of damages for any dispute resolution procedure.

**Article 36. No Discrimination**

- Eliminates language referring to trainee requirements on federally funded projects.

**Article 37. Labor Law Requirements**

- Requires contractor to pay for the cost of any investigation conducted that discovers a failure to pay prevailing wages.
- Deletes outdated references to Administrative Code Section 6-109.

**Article 38. Payroll Reports**

- Allows the Commissioner, the ACCO, the EAO, and the Comptroller to require contractors and subcontractors to submit original payrolls or transcripts.

**Article 40. Contract Price**

- Title changed from "Awarded Price"

**Article 41. Bid Breakdown on Lump Sum**

- No partial payment shall be made until contractor submits bid breakdown accepted by Resident Engineer.

**Article 44. Substantial Completion Payment**

- Requires that a copy of Final Approved Punch List be submitted with substantial completion payment request.

**Article 48. Commissioner's Right to Declare Contractor in Default**

- Provides additional ground for default

**Article 49. Exercise of the Right to Declare Default**

- Article 78 proceeding to be the sole remedy for contractor to challenge a default determination.

**Article 56. Claims and Actions Thereon**

- Reduces time for bringing lawsuit not subject to dispute resolution from 12 to 6 months from the date of certain milestones set forth in contract.

**Article 64. Termination by the City**

- Revises the payment to be made by the City in the event of a termination.

7. Refer to Page 143, Article 1.06.35.(O);  
Change in 7th line, "with Art. 40 of the Agreement" to "with Art. 41 of the Contract".
8. Refer to Page 143, Article 1.06.35.(P);  
Change in 4th line, "pursuant to Article 41 or Article 42 of the Agreement" to "pursuant to Article 42 or Article 45 of the Contract".
9. Refer to Page 147, Article 1.06.44.(G);  
Change in 8th line, "pursuant to Article 49 of the Agreement" to "pursuant to Article 52 of the Contract".
10. Refer to the Contract, Article 26.2 entitled "Extra Work": Article 26.2 is amended to provide that (1) the price to be paid for Extra Work shall include the cost of workers compensation insurance, and (2) the cost of such insurance shall not be deemed included in the 10% for overhead.

In computing the price to be paid for Extra Work, the cost of workers' compensation insurance shall be based upon the average rate for such insurance for the applicable classes of labor, in accordance with the most recent schedule promulgated by the New York State Workers' Compensation Board. The cost of workers' compensation insurance shall not be subject to any percentage for overhead and/or profit.