

Job Order Contracting: **What you need to know to stay Legal & Compliant**

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A hand is holding a black smartphone. The screen of the phone displays a vertical gradient background that transitions from a reddish-orange at the top to a light green at the bottom. The word "Objectives" is written in white, sans-serif font in the center of the screen.

Objectives

Concepts & Terminology of Job Order Contracting (JOC)

Maintenance vs. Construction

Trade JOC vs. JOC

Quoting vs. Bidding

Why Job Order Contracting (JOC)

“Time & Materials”

- If providing “construction services”
- Only method allowed to select contractors for future, undefined projects

[TEC 44.031\(a\)1-8](#)



Maintenance VS. Construction

- **Factors to Consider**

- “Like for like” – NOT new or upgraded
- Scale and complexity of project
- Physical size of object being worked on

JOC contract (Coefficient)
(TGC 2269)



Repair &
Maintenance

Maintenance Contract (T&M)
(TEC 44.031)



Construction
Services

What is Job Order Contracting?

- “A procurement method used for maintenance, repair, alteration, renovation remediation, or minor construction” of facilities “when the work is of a recurring nature but the delivery times, types, and quantities of work required are indefinite.”

TEX. GOV'T CODE § 2269.401



Using JOC's procured by Purchasing Cooperatives

- Gov't Entity selects vendor without having to use its own competitive procurement process
- ONLY satisfies the *procurement* requirement, NOT the *contracting* requirement
- Statute **requires** a **written and signed** job order between the vendor and the Gov't Entity **TGC 2269.410(a)**
- Only construction method that allows for use of a cooperative in lieu of self-procurement
- Only method allowed to select contractors for future, undefined projects or tasks



Requires Established Contractual Unit Prices

- The contract specified UPB is a published maintenance or construction unit price book (RS Means or National Construction Estimator by Craftsman).
- Contains a list of tasks with an assigned cost for each task representing labor, material, and equipment cost.

What is a JOC/IDIQ Estimate?

- A line item assessment utilizing the Unit Price Book (UPB)
- Contains the tasks necessary to complete scope of work
- “Localized” by applying a City Cost Index (CCI) assigned to various cities
- Reduced by legally bid coefficient (Not ALL Coefficients created equal)
- Contains contract number
- Subcontractor pricing must be estimated using the UPB for ALL scope of work

JOC/IDIQ Estimate

Roofing JOC/IDIQ RS Means UPB Training Sample

Vendor Name

Job Description

Choice Partners Contract #17/038CG-XX

Data Release : Year 2017 Quarter 2 (Use most updated available at time quote is requested)

Quantity	LineNumber	Description	Unit	Ext. Total O&P	Labor Type	Data Release	CCI Location	Notes
35	024119192040	Selective demolition, rubbish handling, 0 - 100' haul, load, haul, dump and return, hand carried, cost to be added to demolition cost	C.Y.	\$ 2,089.85	RR	Year 2017 Quarter 2	TEXAS / HOUSTON (770-772)	
35	024119193040	Selective demolition, rubbish handling, 50' haul, loading & trucking, hand loading truck, cost to be added to demolition cost	C.Y.	\$ 2,027.20	RR	Year 2017 Quarter 2	TEXAS / HOUSTON (770-772)	
9	024119200100	Selective demolition, dump charges, typical urban city, building construction materials, includes tipping fees only	Ton	\$ 729.00	RR	Year 2017 Quarter 2	TEXAS / HOUSTON (770-772)	
1600	070505100120	Selective demolition, thermal and moisture protection, downspouts, including hangers	L.F.	\$ 1,616.00	RR	Year 2017 Quarter 2	TEXAS / HOUSTON (770-772)	
2150	070505100420	Selective demolition, thermal and moisture protection, gutters, metal or wood, edge hung	L.F.	\$ 3,182.00	RR	Year 2017 Quarter 2	TEXAS / HOUSTON (770-772)	
2150	070505102270	Selective demolition, thermal and moisture protection, roof edge, gravel stop	L.F.	\$ 795.50	RR	Year 2017 Quarter 2	TEXAS / HOUSTON (770-772)	
2150	070505103730	Selective demolition, thermal and moisture protection, roofing, built-up, embedded gravel removal	S.F.	\$ 1,913.50	RR	Year 2017 Quarter 2	TEXAS / HOUSTON (770-772)	
2150	075216101800	SBS modified bituminous membrane, smooth surface flashing, 150 mils	S.F.	\$ 7,009.00	RR	Year 2017 Quarter 2	TEXAS / HOUSTON (770-772)	
1075	075216102020	SBS modified bituminous membrane, roofing asphalt, 20 to 30 mils	S.F.	\$ 881.50	RR	Year 2017 Quarter 2	TEXAS / HOUSTON (770-772)	
2150	077119101360	Gravel stop, galvanized steel, plain, with continuous cleat, 4" leg, 6" face height, 24 gauge	L.F.	\$ 22,489.00	RR	Year 2017 Quarter 2	TEXAS / HOUSTON (770-772)	
		RS Means Unit Cost Total		\$ 42,732.55				
		Total with Coefficient (.84 x RS Means Total)		\$ 35,895.34				
		2% Bond (Any additional Pass-Through Costs)		\$ 717.91				
		Total Project Quote		\$ 36,613.25				

Review the JOC Quote!



CCI location



Division 1



Coefficient



Adjustment Factors



O & P Pricing



Data release (most recent)

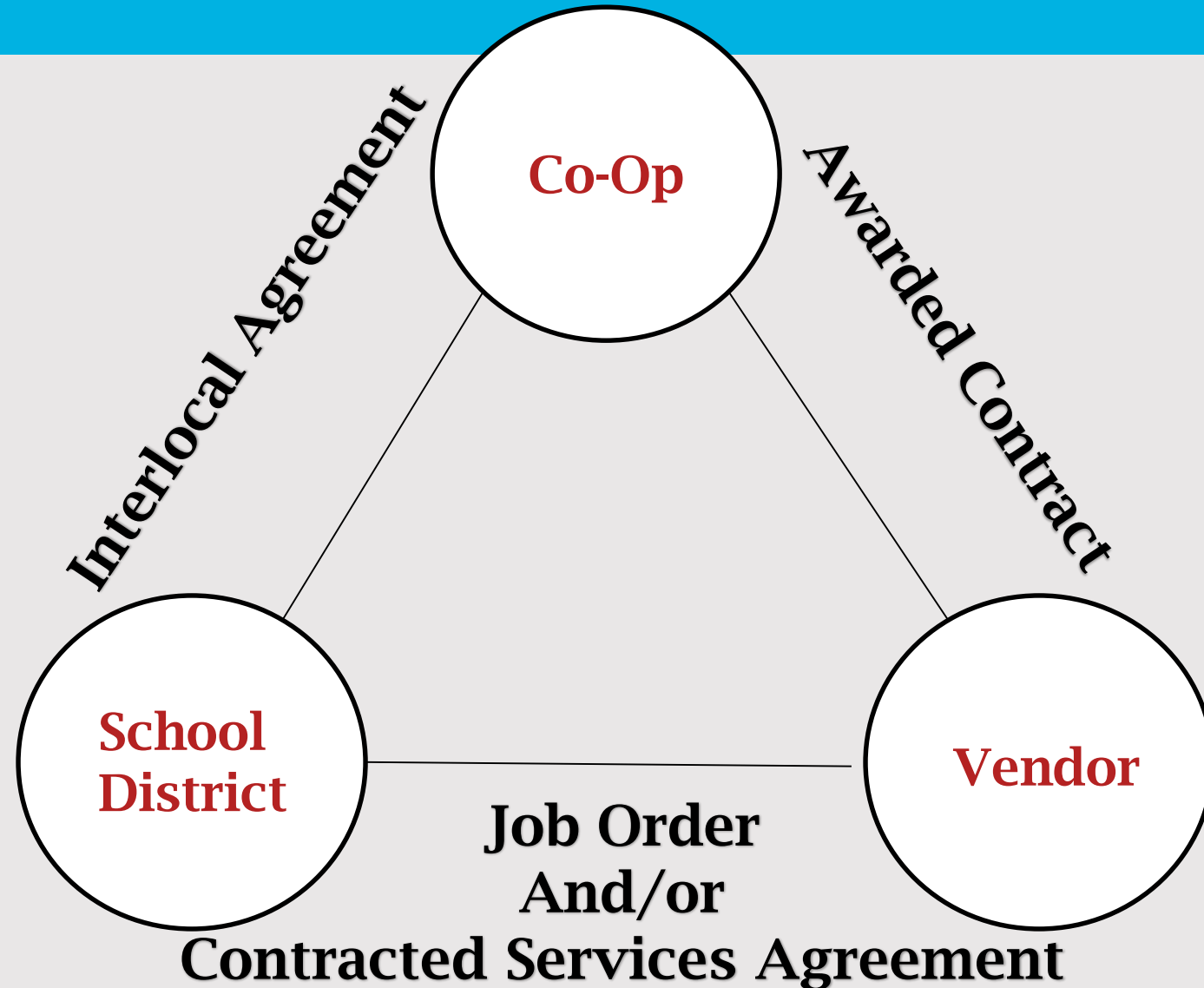


Non pre-priced items



Attempts to pass-through co-op fee

Coops and Contracting



Use A Master Job Order Contract!

- Contains District's project specific Scope of Work
- Includes Job Order & Prevailing Wage Rate as Attachments
- Liquidated Damages
- Retainage
- Terms & Conditions Specific to District
- Signed by District and Vendor

“An order for a job or project under a job order contract must be signed by the governmental entity's representative and the contractor.”

TEX. GOV'T CODE § 2269.410



The Job Order

- The **Job Order** is an attachment to the Job Order Contract (typically Attachment “A”):
 - Formally written
 - Project-specific
 - Owner authorization to provide a lump sum, fixed priced estimate
 - Based on the owner/contractor team’s defined scope of work.
 - Include Owner’s adopted prevailing wage rates as an attachment (required on all Public Works Projects) – Typically Attachment “B”



Public Works Bonds

- Performance bond required if contract is in excess of \$100,000
 - Protects the District from financial losses arising from default, material breach, termination or abandonment
- Payment bond required if a contract is in excess of \$25,000
 - Protects the District from claims for nonpayment of suppliers, subcontractors, and sub-subcontractors.

TEX. GOV'T CODE § 2253.021



JOCs and Using an Architect or Engineer

- District must independently hire A/E if services required
TEX. GOV'T CODE § 791.011(j)
- Architect required for:
 - A new building having construction costs exceeding \$100,000
 - An alteration or addition having construction costs exceeding \$50,000TEX. OCC CODE § 1051.703
- Exceptions to Engineering Services:
 - An engineer is **NOT** required for a public work project if:
 - A project involving electrical or mechanical engineering will cost **\$8,000 or less**
 - A project not involving electrical or mechanical engineering will cost **\$20,000 or less** (i.e., structural or civil)TEX. OCC CODE § 1001.053

What Must Go To The Board?

- **Determination of construction services project delivery method (if other than CSP)**
- Approval of competitive procurement results, where procurement is required
- Approval of all Interlocal Contracts for cooperatives
- Approval of the contract with any vendor
- Approval of all contract amendments or change orders
- All contract renewals and contract terminations
- Board may act to delegate all of the above powers (CH or CV Local)
- **Job Orders (including cooperative purchases) in excess of \$500,000**

Trade JOC vs. JOC

Trade JOC:

- allows the use of one trade or division
- reduces overhead expenses when multiple trades are not needed to complete project

JOC:

- allows for the use of all divisions and is typically a general contractor

Case law has clarified that a “public work contract includes both traditional construction and contracts for repair of a building.” *LA Ash, Inc. v. Tex. A&M Univ.*, 2008 Tex. App. LEXIS 8206, 2008 WL 4742135 (Tex. App. Waco Oct. 29, 2008); see also *Acratod Co. v. Housing Auth. Of Houston*, 1999 Tex. App. LEXIS 889, 1999 WL 82450 (Tex. App. Houston 1st Dist. Feb. 11, 1999).

Bidding vs. Quoting

Bid / Proposal:

- formal
- written
- sealed response
- satisfies the state's procurement requirements
- When using federal funds, must be 2 CFR Part 200 (EDGAR) compliant

Quote:

- job-specific price in writing
- based on vendor's previously bid & awarded contract coefficient
- When using federal funds, must request at least one of the three quotes from a minority-owned or woman-owned business

Takeaways

- Establish procurement method with your vendor prior to them quoting the job
- Include contract number on quote and PO
- Verify pricing by requesting the vendor's line item estimate with legally bid coefficient
- If utilizing a coop, send a confirming copy of each JOC PO issued to Coop
- Not all Co-ops are created equal, are in State, or are 2 CFR Part 200 (EDGAR) compliant
- Board Approval

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