

# HCDE-CP JOC/IDIQ 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 presentation slide with a vertical gradient background transitioning from orange at the top to green at the bottom. The word 'Objectives' is written in white, sans-serif font in the center of the screen. To the right of the phone, there are four horizontal, semi-transparent dark gray bars, each containing a white text label.

# Objectives

Concepts & Terminology of Job Order Contracting

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](#); TEC 51; LGC 252.043; LGC 262.023; LGC 271.054

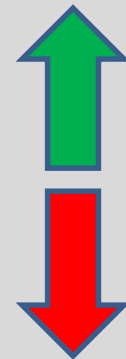
# JOC/IDIQ

- **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**  
**(TGC 2269)**

- **Maintenance Contract**  
**(TEC 44.031)**



Repair &  
Maintenance  
  
Construction  
Services

OSHA Letter to Raymond Knobb (11.18.2003)

# JOC/IDIQ

- **What is JOC/IDIQ Contracting?**
  - Job Order Contracting (JOC)/Indefinite Delivery Indefinite Quantity (IDIQ) is a Public Work Maintenance, Repair, Alteration, Renovation, Remediation or Minor Construction Procurement and Delivery Method allowed by Texas Government Code 2269 or Texas Education Code 51 for Construction Services



# JOC/IDIQ

- **What is JOC/IDIQ Contracting?**
  - 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
  - Can use the CSP method to obtain proposals



# JOC/IDIQ

- **What Cannot be done under a JOC Contract?**
  - Engineering and Architectural Services
  - Ground up construction of a new building
  - A related type of project associated with civil engineering construction
  - A building or structure that is incidental to a project that is primarily a civil engineering construction project

Texas Government Code 2269.402, 2269.408

- **What is the Unit Price Book?**
  - 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.



# JOC/IDIQ

- **What's 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

# 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

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				
		<b>Total with Coefficient (.84 x RS Means Total)</b>		<b>\$ 35,895.34</b>				
		2% Bond (Any additional Pass-Through Costs)		\$ 717.91				
		<b>Total Project Quote</b>		<b>\$ 36,613.25</b>				

# JOC/IDIQ

- **JOC/IDIQ Estimate Must-Haves**
  - Contract number and legally bid coefficient
  - Subcontractor pricing must be estimated using the UPB for ALL scope of work



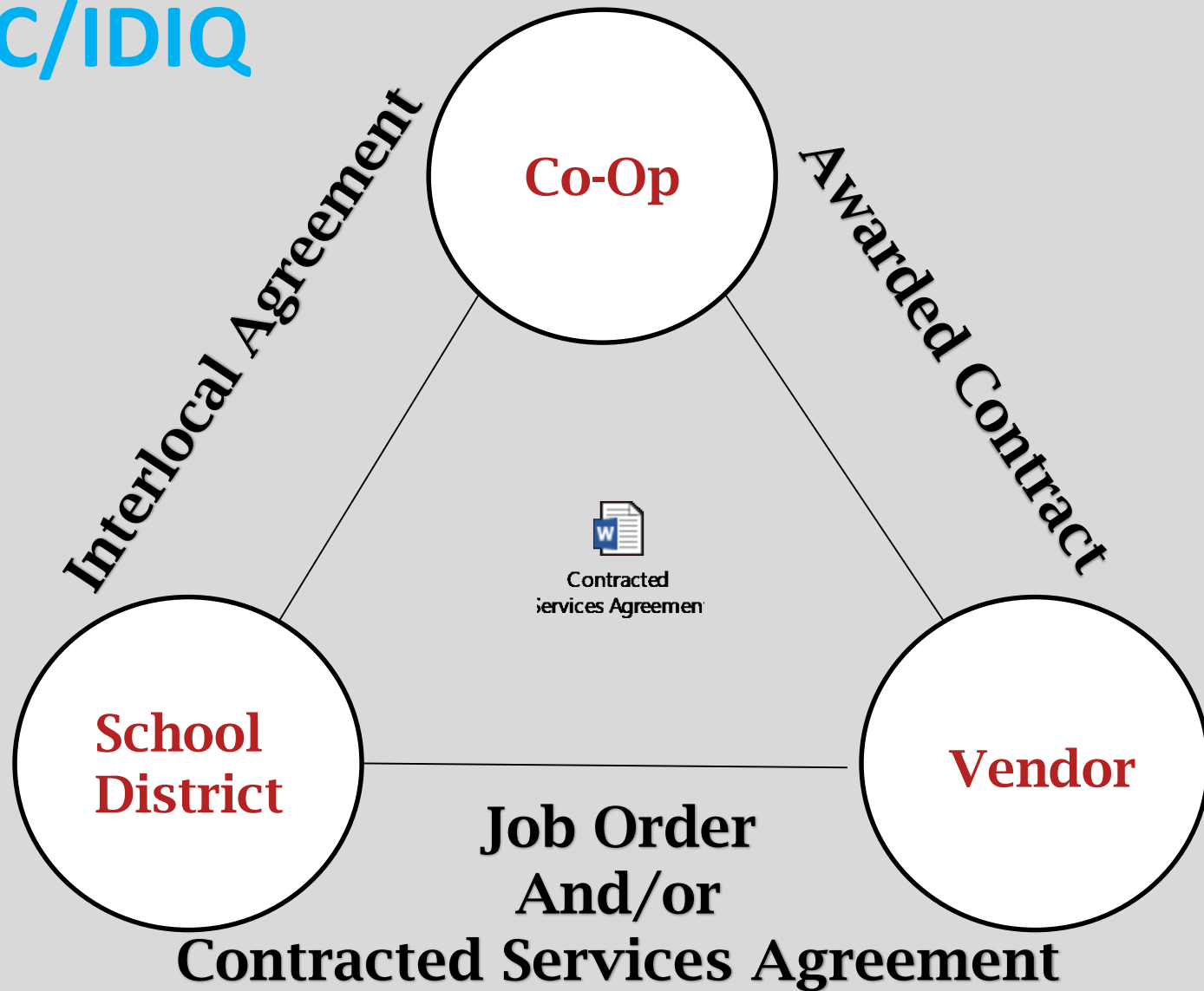
# JOC/IDIQ

- **What is the Unit Cost?**
  - Includes all costs related to labor, materials, and equipment
  - “Localized” by applying a City Cost Index (CCI) assigned to various cities

# JOC/IDIQ

- **What is a Coefficient?**
  - Establishes a competitively bid cost adjustment or multiplier to the UPB pricing
  - Includes contractor's overhead and profit.
  - Represented as a baseline of 1.0.

# JOC/IDIQ



# JOC/IDIQ

- **The Job Order?**

- The Job Order is:
  - 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



# 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



# 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, one of three quotes must be from a minority-owned or woman-owned business

# What We Learned in 2017 & 2018 Related to Disaster Preparedness

- The Importance of the “**6 Affirmative Steps**” under **2 CFR Part 200**
  - When soliciting multiple quotes, one of the three **MUST** be from a minority-owned or woman-owned business
  - Prime contractors **MUST** also demonstrate that it took “**6 affirmative steps**” when selection sub-contractors or sub-consultants
  - Coops **MUST** be able to demonstrate that it took “**6 affirmative steps**” when procuring and awarding contracts
- Applicants are **NOT** permitted to use out-of-state cooperative purchasing programs (FEMA Public Assistance Fact Sheet, January 26, 2018)
- Office of Inspector General (OIG) will closely scrutinize purchasing cooperatives for compliance with 2 CFR Part 200
- Ignorance (“I Didn’t Know”) is not an acceptable excuse for FEMA or the OIG



FEMA Fact Sheet

# What We Learned in 2017 & 2018 Related to Disaster Preparedness Documentation

- Have a contract in place for **ALL** procurements
  - Require vendor to provide set unit prices or rates
  - Require vendor to give a not-to-exceed or guaranteed maximum price
  - Include contractual provisions requiring itemized invoices and certified payroll with timesheet backup
  - Strike arbitration clauses, and ensure that choice of law & venue provisions are local
  - Be aware of scams from companies offering to handle claims in exchange for a portion of insurance or FEMA proceeds
- Why you chose the procurement method
- Why you chose the type of contract
- Why you chose or rejected a contractor
- The basis for the contract price
- **Pictures** and **Video** are invaluable



Addendum for  
Mediation Services Co

# FEMA Top 10 Procurement Mistakes Leading to Loss of FEMA Funding



Top 10

- Engaging in a noncompetitive procurement w/o carefully documenting urgent need
- Continuing work under noncompetitive contract after urgent need has ended
- Piggybacking onto another jurisdictions contract. Noncompetitive or materially different (rarely allowable)
- Awarding a T&M contract w/o a ceiling price. Must show no other contracting method is suitable.
- Awarding a “cost-plus-percentage-of-cost” or “percentage-of-construction-cost” contract
- Not including the required contract clauses (available at below link under “PDAT Resources” menu
- Including a geographic preference in a solicitation (giving an advantage to local firms is violation of 6 Affirmative Steps)
- Not making and documenting efforts to solicit small business, minority businesses, and woman’s business enterprises
- Conduction a procurement exceeding \$150,000 without conducting a detailed cost or price analysis
- Not carefully documenting all steps of a procurement to create a record if questions arise potentially years later

For more information, please visit <https://www.fema.gov/procurement-disaster-assistance-team>

# Taking Emergency Exception to Procurement DOES NOT allow you to Bypass other Laws

- Payment bonds are still required for public works projects that exceed \$25,000 in value
- Performance bonds are required for projects that exceed \$100,000 in value
- Clean-up work (which includes dehumidifying, dewatering, debris removal, and removal of wet materials) is NOT a public works project and does not require bonding
- Buildback and restoration work (construction) ARE public works that require bonding

# 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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