

Job Order Contracting & Purchasing Co-ops for Small Facilities and Maintenance Projects



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What are “construction services” under 2269?



- Tex. Gov’t Code Chapter 2269 “applies to a public work contract made by a governmental entity,” plus certain facilities maintenance contracts
- “Public Work contract” defined as any contract for constructing, altering or repairing a public building
- Routine maintenance is not public work or construction
- Definition of “routine maintenance” is narrow; safest bet is to use Job Order Contracting

Authorized delivery methods under 2269



- **Competitive Bidding (must have construction documents / defined project)**
- **Competitive Sealed Proposals (must have construction documents / defined project)**
- **Construction Manager-at-Risk (must have construction documents / defined project)**
- **Job Order Contracting or Coop (projects not yet defined; to be determined/assigned later; some may require construction documents)**
- **Design-Build**
- **Construction Manager-Agent**

What are “Construction Documents”?



- “The written and graphic documents prepared or assembled by the A/E for communicating the project design for construction and administering the construction contract,” including “drawings and specifications.”
 - **Construction Specifications Institute (CSI)**
- Written, graphic and pictorial documents prepared or assembled for describing the design, location and physical characteristics of the elements of a project necessary for obtaining a building permit.
 - **2006 International Building Code**

Competitive Sealed Bids and Competitive Sealed Proposals



- District “shall select or designate an architect or engineer to prepare construction documents for the project.”

TEX. GOV'T CODE §§ 2269.102 & 22269.152

- Request for bids or proposals must include construction documents, weighted selection criteria, estimated budget, project scope, estimated completion date and other necessary information.

TEX. GOV'T CODE §§ 2269.103 & 2269.153

Job Order Contracting



- **Only construction method:**
 - that allows selection of more than one winner / award more than one contract
 - where you can select the vendor without yet having (1) determined scope or (2) prepared construction documents
 - that allows you to procure construction-related services via a purchasing cooperative



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



Requirements for JOCs for Buildings & Facilities



- JOC applies only to a facility that is a **building**, the design and construction of which is governed by accepted building codes, or a **structure or land**, whether improved or unimproved, that is **associated with a building**

TEX. GOV'T CODE § 2269.402

- District may award JOCs for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility, **if**:
 - 1) the work is of a recurring nature but the delivery times are indefinite; **and**
 - 2) indefinite quantities and orders are awarded substantially on the basis of prescribed and prepriced tasks

TEX. GOV'T CODE § 2269.403

NO JOC for...



- a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction
- a building a structure that is incidental to a project that is primarily a civil engineering construction project

TEX. GOV'T CODE § 2269.402



Statutory Requirements for JOCs

TEX. GOV'T CODE Ch. 2269, Subchapter I



- Board approves method; District issues RFCSP stating maximum contract amount
- Proposers bid using coefficients or multipliers of unit price book or other pre-priced list of task, materials or work items
- Proposers submit information relating to qualifications and experience
- District executes contract(s) with one or more vendors for future “as needed work;” maximum 2-year base term with up to three annual renewals
- District issues individual job orders once need arises and scope is developed for a particular sub-project/task
- Job order or purchase order must be signed
- By law, Board must approve any job order that exceeds \$500,000

Unit Pricing Requirements



- Procurement should clearly state that it is for a JOC; follow statutory requirements for JOCs using a RFCSP
- “The governmental entity may establish contractual unit prices for a job order contract by:
 - (1) specifying one or more published construction unit price books and the applicable divisions or line items; or
 - (2) ***providing a list of work items*** and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book ***or prepriced work items*** as the price proposal.”

TEX. GOV'T CODE § 2269.404

Using JOCs procured by Purchasing Cooperatives



- District 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 District**
- Cannot be used for substantial pre-planned construction or renovation; must meet the definition of JOC
- Only construction method that allows for use of a cooperative in lieu of self-procurement



New Certification Requirement for Cooperative JOC Projects

TEX. LOCAL GOV'T CODE § 791.011(j)



- A local government may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative in an amount greater than \$50,000 unless *a person* designated by the local government certifies in writing that:
 - 1) the project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 or 1051, Occupations Code; or
 - 2) the plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared.



NO Coop for...



- Cannot procure architectural or engineering services via an interlocal contract

TEX. GOV'T CODE § 791.011(h)

- *But*, can use a JOC even if architectural/engineering services are needed
 - If a job order contract or order requires engineering or architectural services, must select/designate engineer/architect to prepare construction docs for the project

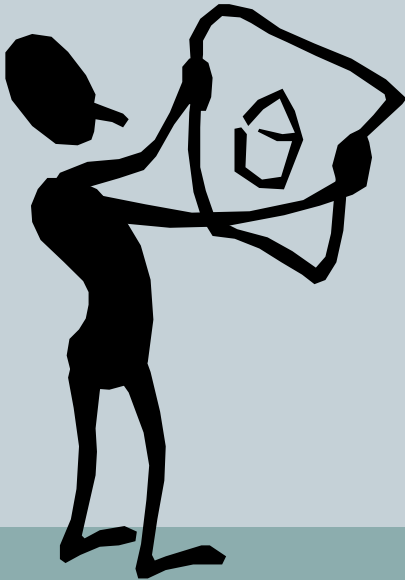
TEX. GOV'T CODE § 2269.408

Practice of Architecture

TEX. OCC. CODE § 1051.001



“Practice of architecture’ means a service or creative work applying the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs intended for human use or occupancy, the proper application of which requires education, training, and experience in those matters.”



Requirements for Public Works

TEX. OCC. CODE § 1051.703(a)



A new building owned by a political subdivision having construction costs exceeding \$100,000 or an alteration or addition to an existing building having construction costs exceeding \$50,000 must have architectural plans and specifications prepared by an architect.

Practice of Engineering

TEX. OCC. CODE § 1001.001



- The “practice of engineering’ means the performance of or an offer or attempt to perform any public or private service or creative work, the adequate performance of which requires engineering education, training, and experience in applying special knowledge or judgment of the mathematical, physical, or engineering sciences to that service or creative work.”
- “A service, design, analysis, or other work performed for a public or private entity in connection with a utility, structure, building, machine, equipment, process, system, work, project, or industrial or consumer product or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature.”



**THE HELPFUL
ENGINEER**

PUBLIC WORKS PROJECTS

TEX. OCC. CODE § 1001.407



A political subdivision may not construct a public work involving engineering in which the public health, welfare or safety is involved unless the engineering plans, specifications, and estimates have been prepared by an engineer and the engineering construction is to be performed under the direct supervision of an engineer.



Exceptions

TEX. OCC. CODE § 1001.053



- 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)
- Remember: “Public Work” is defined as constructing, altering or repairing a public building
 - does not include true “maintenance” (i.e. like-for-like replacements)

JOCs and using an Architect or Engineer

TEX. GOV'T CODE § 2269.408



- “If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter 1051, Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupations Code, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.”
- Do not need a separate A/E to design “**relocatable educational facilities**” subject to and approved under Chapter 1202, Occupations Code (structure only); however, separate A/E may be required for designing utility connections or infrastructure (depending on cost).

Portable and Modular Buildings

19 TEX. ADMIN. CODE § 61.1036(f)(3)



- Within 30 days of erection and installation (and before occupancy), a school district must have a portable or modular building inspected, including the construction of the foundation system and the erection and installation of the building on the foundation.
- Must be inspected by the local building authority, if in a jurisdiction with adopted building code.
- Must be inspected by a certified independent third party inspector if in an area with no adopted building code or building inspector.
- Installation of portable/modular must be inspected even if manufacturer used State-approved and sealed plans for the building.



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

Prevailing Wage Rates



- Required on all Public Works projects; can use local rates from a survey **or** the published U.S. Department of Labor's (Davis Bacon) wages
- Board must adopt Prevailing Wage Rates (typically by resolution)
- Prevailing Wage Rates must be published in the bid specifications/project manual and referenced in the contract documents
- Federally-Funded Projects – most have strict Davis Bacon program requirements; coordinate with legal counsel prior to bidding/contracting for compliance

Criminal History Review



- District must collect and maintain the certification forms from all tiers
- Applies to employees and independent contractors of contractors and subcontractors (including professional consultants) who:
 - ✓ Has, or will have, continuing duties under a contract
 - ✓ Has opportunity for direct contact with students
- Prohibited Offenses:

Convictions of felony crimes against the person or any conviction requiring sex offender registration, if:

 - ✓ The offense occurred within 30 years of date employment will begin (or date the law was effective, for existing employees), and
 - ✓ The victim was under the age of 18 or enrolled in public school at the time of the offense

What Must Go To The Board?



- Determination of construction services project delivery method (if other than competitive sealed bids)
- 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

Thank you for your time and attention!



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