HCDE-CP JOC/IDIQ Contracting:
What you need to know to stay Legal & Compliant

BY: Jeff Drury – Director, Choice Partners Cooperative
(Division of Harris County Department of Education)
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**
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 Services
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 allowed by Texas Government Code 2269 for Construction Services.
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
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.
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
Choice Partners

#### Job Description
Contract #17/038CG-XX

#### Data Release: Year 2017 Quarter 2

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Line Number</th>
<th>Description</th>
<th>Unit</th>
<th>Ext. Total O&amp;P</th>
<th>Labor Type</th>
<th>Data Release</th>
<th>CCI Location</th>
<th>Notes</th>
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<tr>
<td>35</td>
<td>024119192040</td>
<td>Selective demolition, rubbish handling, 0 - 100' haul, load, haul, dump and return, hand carried, cost to be added to demolition cost</td>
<td>C.Y.</td>
<td>$2,089.85</td>
<td>RR</td>
<td>Year 2017 Quarter 2</td>
<td>TEXAS / HOUSTON (770-772)</td>
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<td>35</td>
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<td>Selective demolition, rubbish handling, 50' haul, loading &amp; trucking, hand loading truck, cost to be added to demolition cost</td>
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<td>9</td>
<td>024119200100</td>
<td>Selective demolition, dump charges, typical urban city, building construction materials, includes tipping fees only</td>
<td>Ton</td>
<td>$729.00</td>
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<tr>
<td>1600</td>
<td>070505100120</td>
<td>Selective demolition, thermal and moisture protection, downspouts, including hangers</td>
<td>L.F.</td>
<td>$1,616.00</td>
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<td>2150</td>
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<td>Selective demolition, thermal and moisture protection, gutters, metal or wood, edge hung</td>
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<td>Selective demolition, thermal and moisture protection, roofing, built-up, embedded gravel removal</td>
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<td>$1,913.50</td>
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<td>TEXAS / HOUSTON (770-772)</td>
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<td>2150</td>
<td>075216101800</td>
<td>SBS modified bituminous membrane, smooth surface flashing, 150 mils</td>
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<td>$7,009.00</td>
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<td>1075</td>
<td>075216102020</td>
<td>SBS modified bituminous membrane, roofing asphalt, 20 to 30 mils</td>
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<td>$881.50</td>
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<td>TEXAS / HOUSTON (770-772)</td>
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<td>2150</td>
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<td>Gravel stop, galvanized steel, plain, with continuous cleat, 4&quot; leg, 6&quot; face height, 24 gauge</td>
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<td>$22,489.00</td>
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<td>TEXAS / HOUSTON (770-772)</td>
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**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
• JOC/IDIQ Estimate Must-Haves

• Contract number and legally bid coefficient

• Subcontractor pricing must be estimated using the UPB for ALL scope of work
• **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
• **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.
Co-Op

School District

Vendor

Interlocal Agreement

Awarded Contract

Job Order
And/or
Contracted Services Agreement
• 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

<table>
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<th>Trade JOC:</th>
<th>JOC:</th>
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<td>• allows the use of one trade or division</td>
<td>• allows for the use of all divisions and is typically a general contractor</td>
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<td>• reduces overhead expenses when multiple trades are not needed to complete project</td>
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</table>
**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 selecting 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
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
FEMA Top 10 Procurement Mistakes Leading to Loss of FEMA Funding

- 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](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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