

Job Order Contracting

(The JOC)



Texas School Construction and Procurement Conference - November 29, 2023

The Brief History of the JOC

JOCs in History

1997

- "Job Order Contracts for Facilities Repair Texas Education Code 44.041.
- 1997
 - Best Picture - the English Patient
 - Best New Artist - LeAnn Rimes
 - The Emmys Were Hosted by Bryant Gumbel
 - The Miami Marlins Won the World Series
 - And the Stupid Green Bay Packers Won the Super Bowl
 - And the Cowboys Finished With a Dismal 6 and 10 Record (and Have Won Only 4 Playoff Games Since Then. Ahahahahahahaha.

PICKING JOB ORDER
CONTRACTING AS THE
METHOD OF DELIVERY



Warmup

Picking Job Order Contracting as a Delivery Method

- Can You Hire a Job Order Contractor Through Purchasing Cooperative?
 - Yes
- If You Hire a Job Order Contractor Through a Purchasing Cooperative Is That the Same as Selecting Job Order Contracting as the Method of Delivery?
 - No
 - A Purchasing Cooperative Is a Type of Interlocal Agreement Governed by the Provisions of the Interlocal Cooperation Act.



Warmup

Picking Job Order Contracting as a Delivery Method

- So, if You Use a Purchasing Cooperative for Construction You Are Purchasing Construction via INTERLOCAL AGREEMENT and Must Follow the Interlocal Cooperation Act.
- You Hire a Job Order Contractor by Following
 - Chapter 44 of the Texas Education Code and
 - Chapter 2269 of the Texas Government Code



Warmup

Picking Job Order Contracting as a Delivery Method

- Job Order Contracting Is the Only Method That Allows:
 - Simultaneous Negotiations With Between the School District and Prospective Contractors
 - The School District To Enter a Job Order Contract With More Than One Contractor Based on a Single Request for Bids or Proposals



Warmup

What is the Job Order Contract Used For

- Legal Description of Permitted Uses From Texas Government Code 2269.402
 - Maintenance of a Facility
 - Repair of a Facility
 - Alteration of a Facility
 - Renovation of a Facility
 - Remediation of a Facility
 - Minor Construction of a Facility (Undefined and Redundant)



Warmup

What is the Job Order Contract Used For

- Legal Description of Permitted Uses From Texas Government Code 2269.402
 - When the Work Is a Kind That Is “Recurring.”
 - When the Work Delivery Times, Types, and Quantities Are “Indefinite.”



Warmup

What is the Job Order Contract NOT Used For

- Legal Description of Prohibited Uses From Texas Government Code 2269.402
 - A Highway;
 - A Road;
 - A Bridge
 - A Utility;
 - A Water Supply Project;
 - A Water Plant;
 - A Wastewater Plant;
 - A Water and Wastewater Distribution or Conveyance Facility;
 - A Drainage Project;
 - 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



Warmup

What is the Job Order Contract NOT Used For

- Legal Description of Prohibited Uses From Texas Government Code 2269.402
- When the Work Is Not the Kind That Is “Recurring.”
- When the Delivery Time Is Not “Indefinite.”



Warmup

ACTUAL Job Order Applications

- Practical Uses
 - Painting
 - Fence Repair and Construction
 - Moving Portables
 - Plumbing
 - General Construction Services (Small Scale)
 - Concrete and Asphalt Repair
 - Emergency Repair Services



Warmup

Actual Prohibited Job Order Contract Jobs

- Prohibitions
 - A New School
 - Desalination Plant
 - Major Construction Projects



TEAM PLAYERS



THE BOARD OF TRUSTEES



TEAM PLAYERS - THE BOARD OF TRUSTEES SELECTING THE METHOD OF DELIVERY

- The Board of Trustees Must Choose a Delivery Method That “Provides the Best Value for the District.”
- The Board May Delegate That Authority to the Administration.
- My Advice: Leave It With the Board.



TEAM PLAYERS - THE BOARD OF TRUSTEES

SELECTING THE METHOD OF DELIVERY

- If You Want To Use Job Order Contracting the Board Must Act. Otherwise:
- The Law Makes Competitive Bidding the Default Method of Delivery.



TEAM PLAYERS - THE BOARD OF TRUSTEES

SELECTING THE METHOD OF DELIVERY

- This Is a **Double-Pick** Method of Delivery
- **First:** the Board Picks Job Order Contracting
- **Second:** the Board Picks Either Competitive Bidding or Competitive Sealed Proposals as the Method of Soliciting the Job Order Contracts



TEAM PLAYERS - THE ADMINISTRATION

Request for Proposals - Required Content

- Administration Must Include the Prevailing Wage Rate Adopted by the Board of Trustees in all Calls for Bids and in the Contract Itself
- Must Also Include Statutory Penalties Including the Fine Amount for the Contractor's Failure To Pay the Prevailing Wage Rate to a Worker.



TEAM PLAYERS - THE ADMINISTRATION

Request for Proposals - Required Content

- § 2258.058. CRIMINAL OFFENSE.
- An Officer, Agent, or Representative of a Political Subdivision Commits an Offense if the Person Willfully Violates or Does Not Comply With a Provision of This Chapter.
- An Offense Under This Section Is Punishable by:
 - A Fine Not To Exceed \$500;
 - Confinement in Jail for a Term Not To Exceed Six Months; or
 - Both a Fine and Confinement.



TEAM PLAYERS - THE ADMINISTRATION

Request for Proposals - Required Content

- Workers' Compensation
 - Board Policy CV(LEGAL)
 - Include in Bid Specifications all Worker's Comp Duties of Contractor
 - Use Prescribed Language in Contract and Bid Requests.



TEAM PLAYERS - THE ADMINISTRATION

Request for Proposals - Required Content

- Notice of Bond Requirements
 - This Will Be on a Work Order by Work Order Basis, but Need To Make Sure at JOC Solicitation That the Contractor Is Bondable
 - If a Work Order Is More Than 100k - Performance Bond
 - If a Work Order Is More Than 25k - Payment Bond



TEAM PLAYERS - THE ADMINISTRATION

ADVERTISEMENT

- Publishing Requirement:
 - Newspaper
 - County in Which Central Administrative Office Is Located
 - Include Time and Place of Opening
 - Once a Week for at Least Two Weeks



TEAM PLAYERS - THE ADMINISTRATION

NOTICE OF AWARD

- The District Must Document the Basis of the Selection
- Make Public Within 7 Days of Contract Being Awarded
- 7 Days After the Agreement Is Reached.



DESIGN PROFESSIONAL REQUIREMENTS

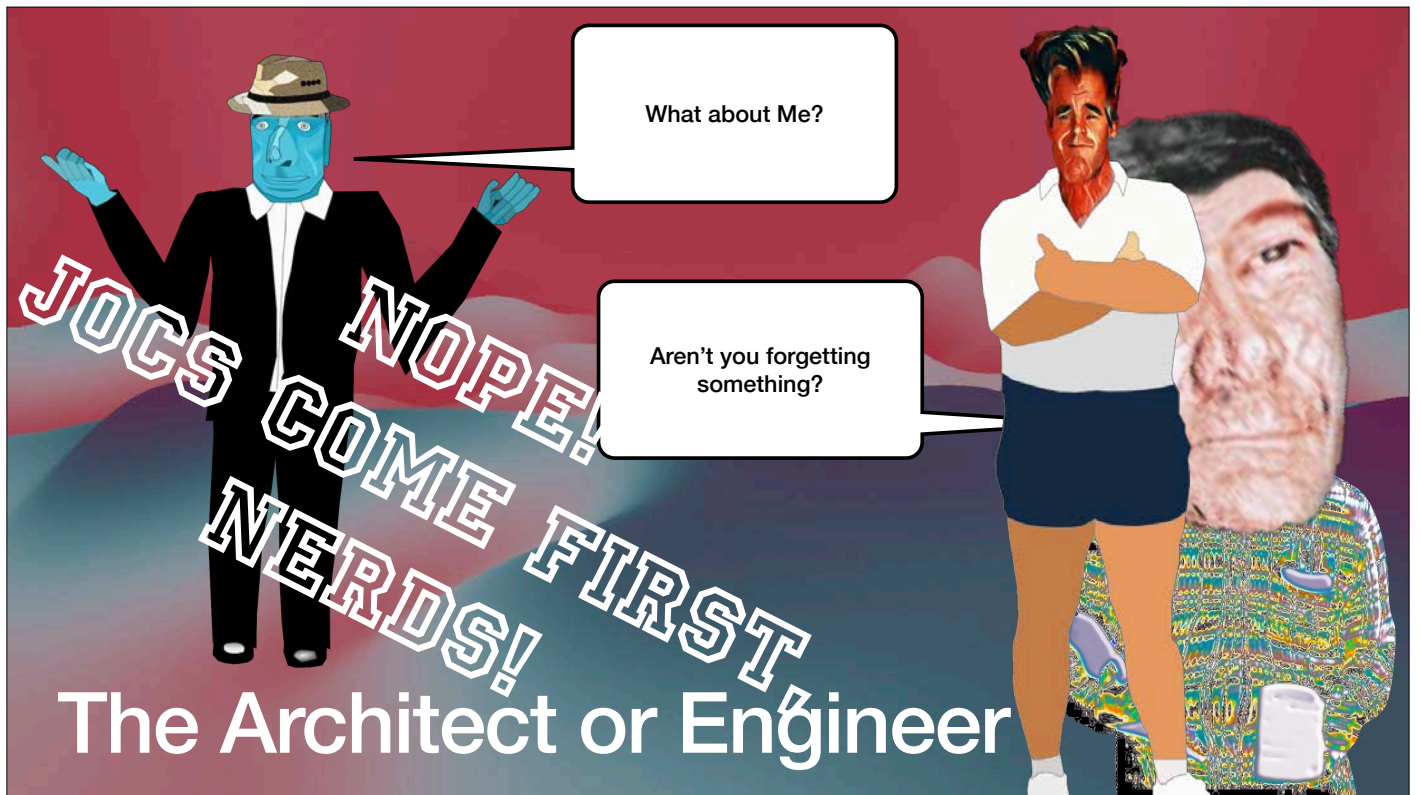


What about Me?

Aren't you forgetting something?



The Architect or Engineer



TEAM PLAYERS - THE DESIGN PROFESSIONALS

WHEN DO WE NEED ONE?

- Assuming the District Does Not Already Have a Scope of Work in Mind for a Particular Project When the Job Order Contract Is Solicited, a Design Professional Can Be Hired After Execution of the JOC
- The Design Professional Requirement Is Based Upon the Scope of a Work Order and So if the Law Requires a Design Professional, the Design Professional Must Be Hired Prior to the Issuance of the Work Order.



WORK ORDERS



TEAM PLAYERS - The Work Order

Statutory Requirements

- The Board Shall Approve Each Job, Task, or Purchase Order That Exceeds \$500,000.
- The District Can Set Lower Thresholds
- Someone Needs To Keep Track of the Aggregate Amount of the Work Orders.
- Their Aggregate Amount Cannot Exceed the Advertised Maximum Value of the Job Order Contract.



TEAM PLAYERS - The Work Order

Statutory Requirements

- Orders Under a Job Order Contract
- Must Be in Writing
- Must Be Signed by an Authorized District Representative
- Should Have Either Lump-Sum Price OR Previously-Established Unit Price.



Emergency JOCs and On-Call Design Professionals



Emergency JOC

- Uniquely Suited for Emergency Applications
 - Emergency Demolition
 - Water Damage Remediation and Restoration
 - Temporary Construction
 - Building Envelope
 - Roofing Repairs
 - Gym Floor Removal



Flexibility Emergency JOC

- Benefits of Hiring an Emergency JOC
 - Contract Is Already Negotiated so We Can Start Issuing Work Orders Right Away.
 - Avoids Price Gouging
 - Puts the District First in Line for Services



Flexibility

Emergency JOC

- Benefits of Hiring an Emergency JOC
- Often Districts Turn to Cooperatives. Unfortunately Those Contracts Are Often Deficient or Onerous
- For Example:



Flexibility

Emergency JOC

- Onerous Terms of Emergency Construction Service Providers
 - Illegal Exclusions
 - “Assumes no Prevailing Wage Rate”
 - Assumes no Payment or Performance Bonds
 - Assumes no Worker’s Compensation
 - Includes Arbitration Provisions or Provisions That Require Litigation in Other States



Flexibility

On Call Design Professional

- You Should Have an On Call
 - Structural Engineer
 - MEP Engineer
 - Civil Engineer
 - Architect



Flexibility

On Call Design Professional

- Designate Emergency Procedures in the Contracts
- Require First Service in Case of Emergency
- Necessary for Almost all Wind Damage Claims



Job-Order Contract

Job Order Contracts

Execute the plan

- Step 1: Select Method of Delivery
- Step 2: Delegate Authority
- Step 3: Select Engineer/Architect – if needed
- Step 4: Selection Criteria/Weights
- Step 5: Prepare request for Bids/ Sealed Proposals



Job-Order Contracts

Execute the plan

- Step 5: Prepare request for Bids/Sealed Proposals
 - Must request information about offeror's "experience, past performance, and proposed personnel and methodology"
 - Should also establish "contractual unit prices"
 - Specify one or more published construction price books and applicable divisions and line items; or
 - Provide a list of work items and require offerors to bid; or
 - propose one or more coefficients or multipliers to be applied to the price books or work items



Job-Order Contracts

Execute the plan

- Step 5: Prepare request for Bids/Sealed Proposals
 - The district shall establish the maximum aggregate contract price when it advertises the proposal.



Job Order Contracts

Execute the plan

- Job Order Contract
- **Step 1: Select Method of Delivery**
- **Step 2: Delegate Authority**
- Step 3: Select Engineer/Architect – if needed
- Step 4: Selection Criteria/Weights
- Step 5: Prepare request for Bids/Sealed Proposals
- **Step 6: Set Prevailing Wage Rate**
- Step 7: Give notice of worker's comp coverage
- Step 8: Require Payment and Performance Bonds
- Step 9: Publish Request for Competitive Sealed Proposals or Bids
- Step 10: Open Competitive Sealed Proposals or Bids
- Step 11: Evaluate and rank proposals
- Step 12: Select the Contractor(s)
- Step 13: Enter Job Order Contract(s) with selected offerors



Job-Order Contracts

Execute the plan

- Step 13: Enter Job Order Contract(s) with selected offerors
 - **Base term and renewal option are as identified in request for proposals**
 - **If such items not addressed in request, then base term may not exceed two years and is not renewable** without further advertisement and solicitation of proposals



Job Order Contracts

Execute the plan

- Job Order Contract
- Step 1: Select Method of Delivery
- Step 2: Delegate Authority
- Step 3: Select Engineer/Architect – if needed
- Step 4: Selection Criteria/Weights
- Step 5: Prepare request for Bids/Sealed Proposals
- Step 6: Set Prevailing Wage Rate
- Step 7: Give notice of worker's comp coverage
- Step 8: Require Payment and Performance Bonds
- Step 9: Publish Request for Competitive Sealed Proposals or Bids
- Step 10: Open Competitive Sealed Proposals or Bids
- Step 11: Evaluate and rank proposals
- Step 12: Select the Contractor(s)
- Step 13: Enter Job Order Contract(s) with selected offerors
- Step 14: Make the selection public.



TEAM PLAYERS - THE LAWYERS

THE CONTRACT and WORK ORDERS

- They Control the Scope, Quality, Cost, and Timing of Your Project.
- The JOC Contract Is Unique in That Generally no Scope Exists at the Time It Is Executed.



TEAM PLAYERS - THE LAWYERS

THE CONTRACT

- The JOC Contract Itself Will Contain the Conditions of the Agreement and *MUST* Include:
 - Price Terms
 - Payment Procedures
 - Instructions for Responding To Work Orders
- The Beginning and End Dates of the Agreement



TEAM PLAYERS - THE LAWYERS

THE CONTRACT

- The JOC Contract Itself Will Contain the Conditions of the Agreement and *Should* Include:
 - Response Time Requirements
 - Emergency Service Terms
 - Renewal Provisions



TEAM PLAYERS - THE LAWYERS

THE WORK ORDERS

- The Work Orders Incorporate the Terms of the JOC Contract and Describe the Work and Pricing.
 - WHAT WILL BE DONE
 - HOW WILL IT BE BILLED?
 - HOURLY OR LUMP SUM?



TEAM PLAYERS - THE LAWYERS

THE JOB ORDER CONTRACT AND WORK ORDERS

- Have Your Lawyer Create Your Job Order Contract Forms.
- Have Your Lawyer Create Your Work Order Forms.
- While the Issuance of Work Orders Can Often Be Very Routine, Some Work Orders May Require Additional Legal Review Before Execution To Ensure Legal Compliance for Unique Projects



Questions and Answers

Texas School Construction and Procurement Conference - November 29, 2023

