



TEXAS DEPARTMENT OF TRANSPORTATION



PROFESSIONAL SERVICES CONTRACT NEGOTIATION

2018 PEPS Conference

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Presentation Topics

1 Introductions & Welcome

2 Big Picture/Goals

3 Rate Negotiations

4 Level of Effort

5 Closing Remarks

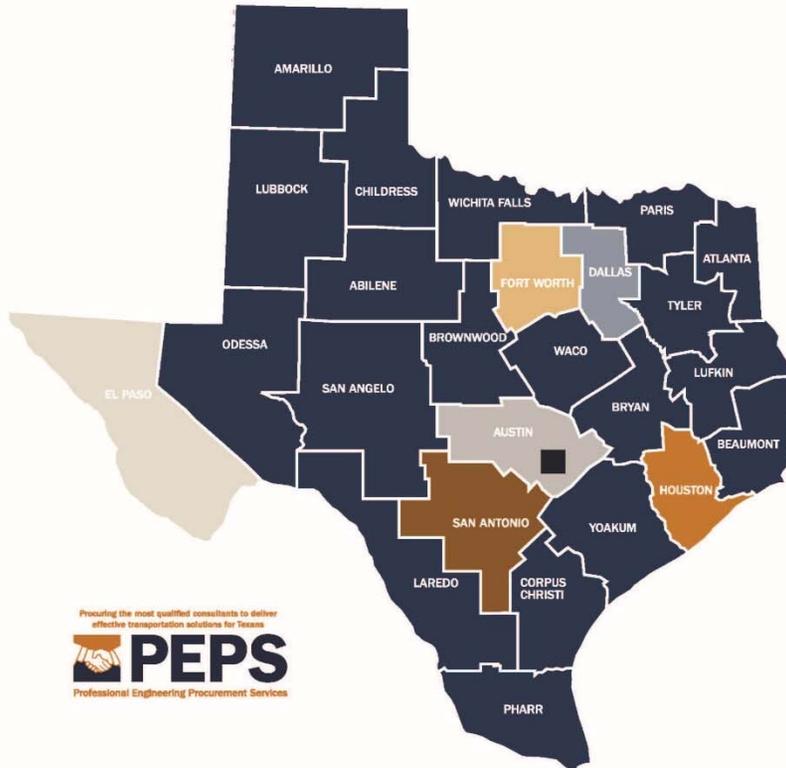
6 Questions & Answers

Productivity is never an accident. It is always the result of a commitment to excellence, intelligent planning, and focused effort.

Paul J. Meyer

Look at the Big Picture – We are a big State

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Look at the Big Picture – We procure different types of contracts

Schematic and Environmental (S&E)

Plans Specifications & Estimates (PS&E)

Utility Engineering

Traffic Engineering

Survey

Geotechnical Engineering

Materials Engineering

Value Engineering

Planning

General Engineering Consultant (GEC)

Construction Engineering Inspection (CEI)

Intelligent Traffic Systems (ITS)

Other

Rate Negotiations

Shirin Helmi, P.E., PMP, CFM

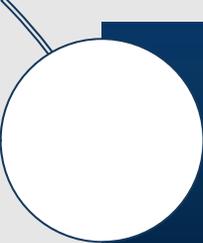
Purpose

- To help set expectations for negotiation of professional services contracts between TxDOT (represented by PEPS Division) and engineering firms
- TxDOT goal is consistency in approach to the negotiation process

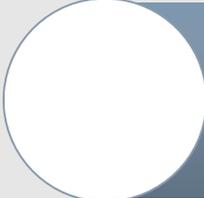
Video Clip: “Monty Python - Life of Brian” - The Haggle Scene



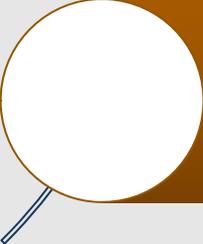
PEPS' Goals



To negotiate with highest qualified provider to reach fair and reasonable cost for services to be provided



To support Department's effort to select and oversee use of consultants to deliver transportation projects



To be customer service oriented

Negotiable Components

Scope

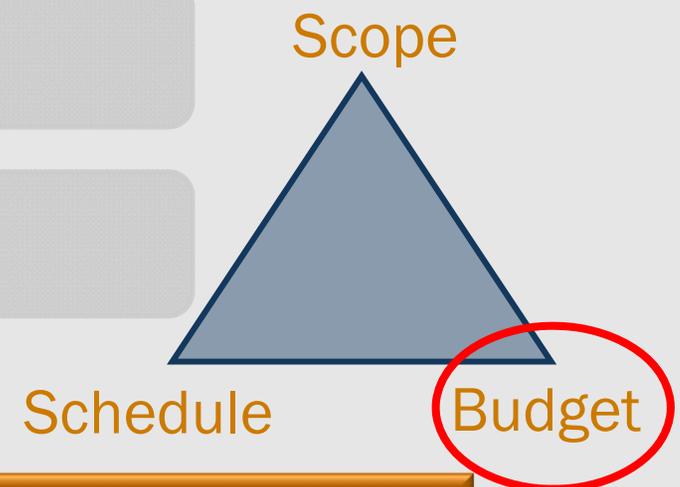
- Managing work

Schedule

- Monitoring progress

Budget

- Processing payment

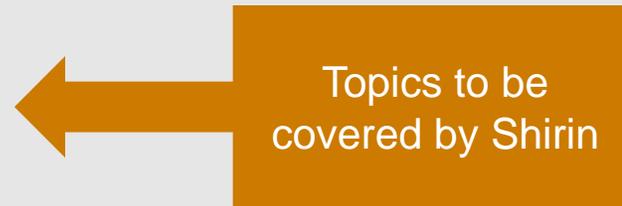


ALL components are negotiable AND interdependent

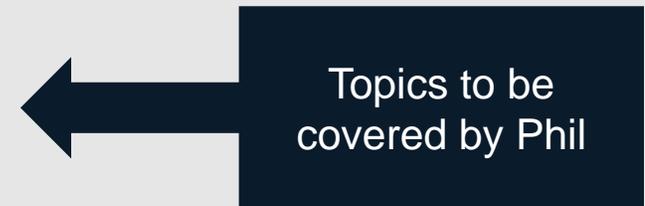
What is the budget?

- Product of negotiation process
- Represents agreement on:
 - Cost of work to be done (Max \$ Not to Exceed)
 - Rate schedules (by payment type)

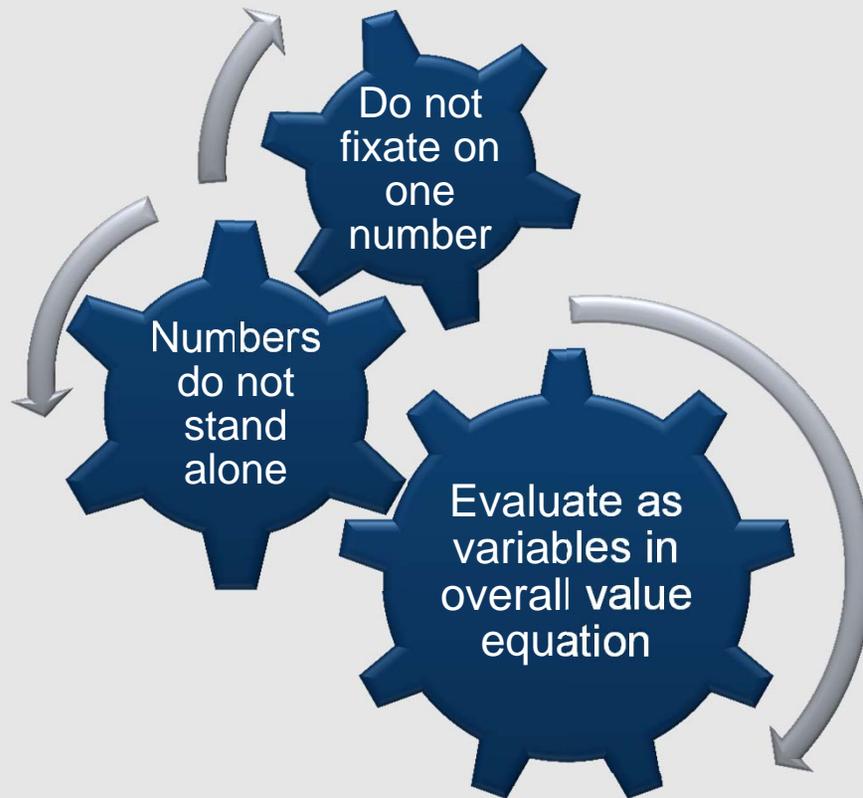
- ✓ Staffing categories
- ✓ Labor rates
- ✓ Overhead rate
- ✓ Profit rate



- ✓ Level of effort
- ✓ Hours by labor category for each task
- ✓ Number of Units or Other Direct Expenses



Separate Pieces but Parts of the Whole



Each contract stands alone

Business models and management philosophies vary by firm

Numbers will vary from firm to firm

PEPS Negotiation Process

PEPS Negotiation Process



- Pre-negotiation meeting



- Consultant makes first offer



- PEPS evaluates offer to determine if the offer is fair and reasonable



- Make counter offer if offer is outside reasonable range



- Negotiations are concluded when both parties are in agreement



- Negotiations terminated by either party if agreement not reached

Pre-Negotiation Meeting (Negotiation Rules of Engagement)

Establish the basic ground rules for the negotiation process (pre-negotiation meeting)

TxDOT:
Procurement
Engineer

Consultant:
Prime Provider
PM

Profit Rate



Indirect Cost
Rates (OH
Rate)

Communication
Escalation:
Chain of
Command

Labor
Categories

Unloaded
& Loaded
Rate

Other
Direct
Expenses

Timing of
Negotiations

Rate Negotiations

Payment Types

Lump sum

Unit cost

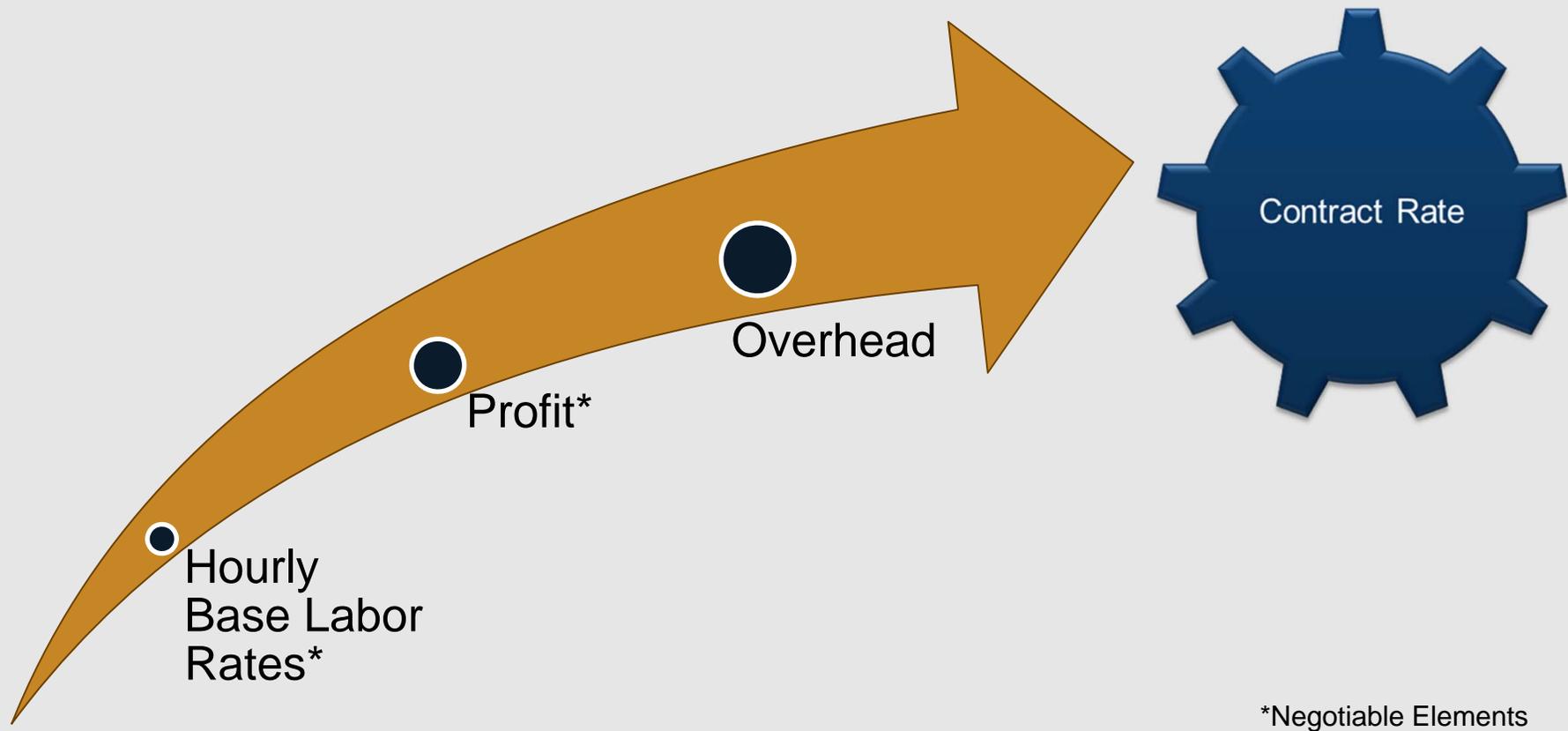
Specified rate

Cost plus fixed rate

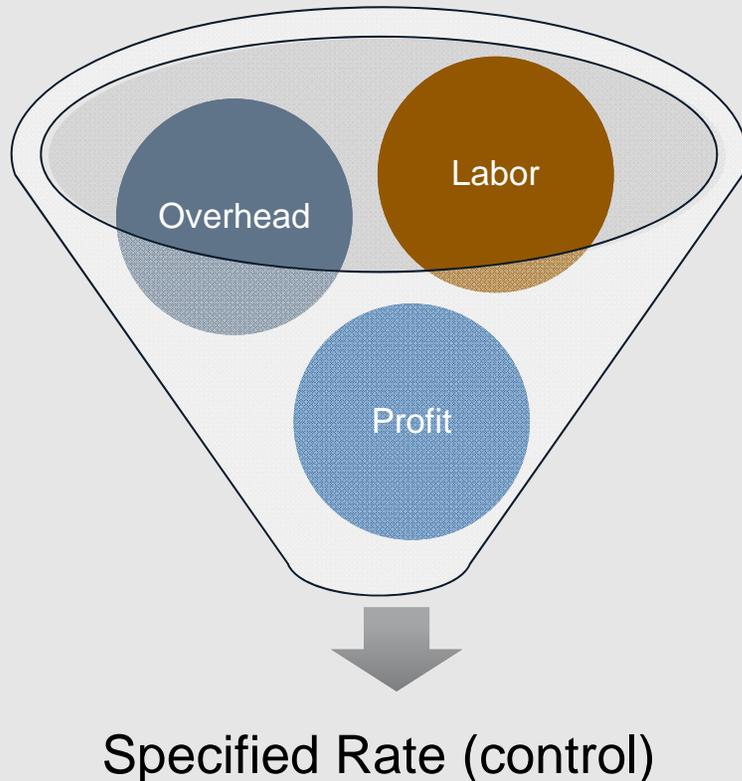
The strategy for each payment type will differ slightly.

Example: Specified Rate Negotiations

Considered Components



Specified Rate – Unloaded (SR-UL)

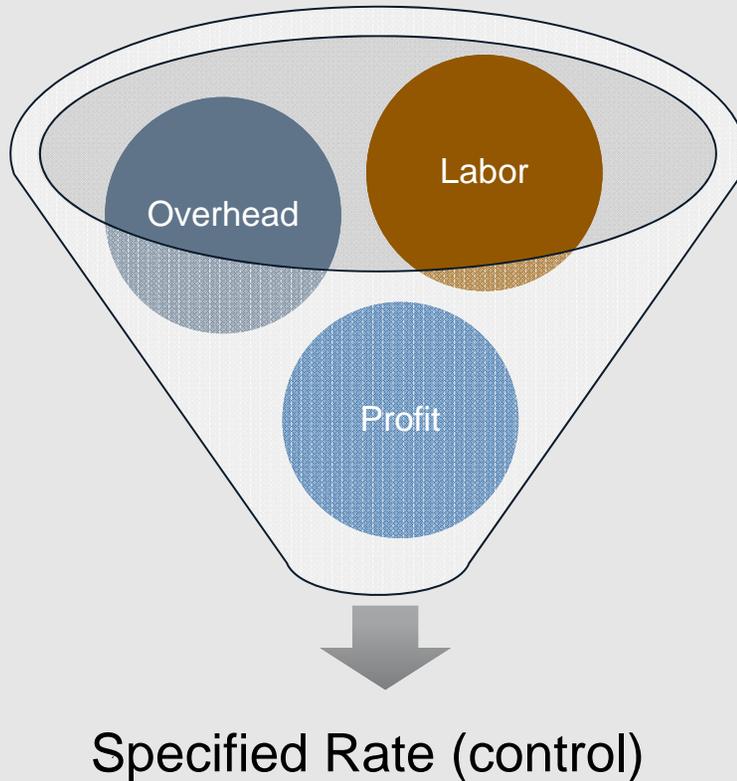


Information is available
to evaluate
Labor, Overhead, and
Profit Rates separately.

Labor Rate x (1 + OH Rate) x (1 + **Profit Rate**) =
Specified Rate (Contract Rate or Loaded Rate)

Example: **\$40/hr** x (1 + **1.55**) x (1 + **0.10**) =
\$112.20/hr

Specified Rate – Loaded



Information is not available to evaluate Labor, Overhead, and Profit Rates separately.

Profit

Profit

Majority of TxDOT's work is predictable

10% is very reasonable profit

Overhead (Administrative Qualifications)

Overhead Rate (OH) & Administrative Qualification

1

- Administrative Qualification defined in 43 TAC §9.34

2

- OH rate, or indirect cost rate, is validated and documented by PEPS Administrative Qualifications Team

3

- OH rates provided to procurement engineers before start of negotiation

4

- Administrative Qualification: Round 2 Break Out Sessions in Salon C

Best & Final Offers



Best and Final Offers from Engineer

Best and final offer received from Engineer

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graph TD; A[Best and final offer received from Engineer] --> B[Intent is not to accept offer if not considered fair and reasonable by PEPS negotiator]; B --> C[PEPS negotiator must have agreement of Service Center Manager and discuss with PEPS Division Director]; C --> D[District or Division must be notified];
```

Intent is not to accept offer if not considered fair and reasonable by PEPS negotiator

PEPS negotiator must have agreement of Service Center Manager and discuss with PEPS Division Director

District or Division must be notified

Best and Final Offers from TxDOT

PEPS intends to make a best and final offer.

PEPS negotiator must have the agreement of the Service Center Manager, and discuss with the PEPS Division Director.

District or Division must be notified.



Disagreement is Okay

If the engineer or TxDOT walks away, it's a business decision, and it does not impact the consideration of the engineer or firm on future selections.

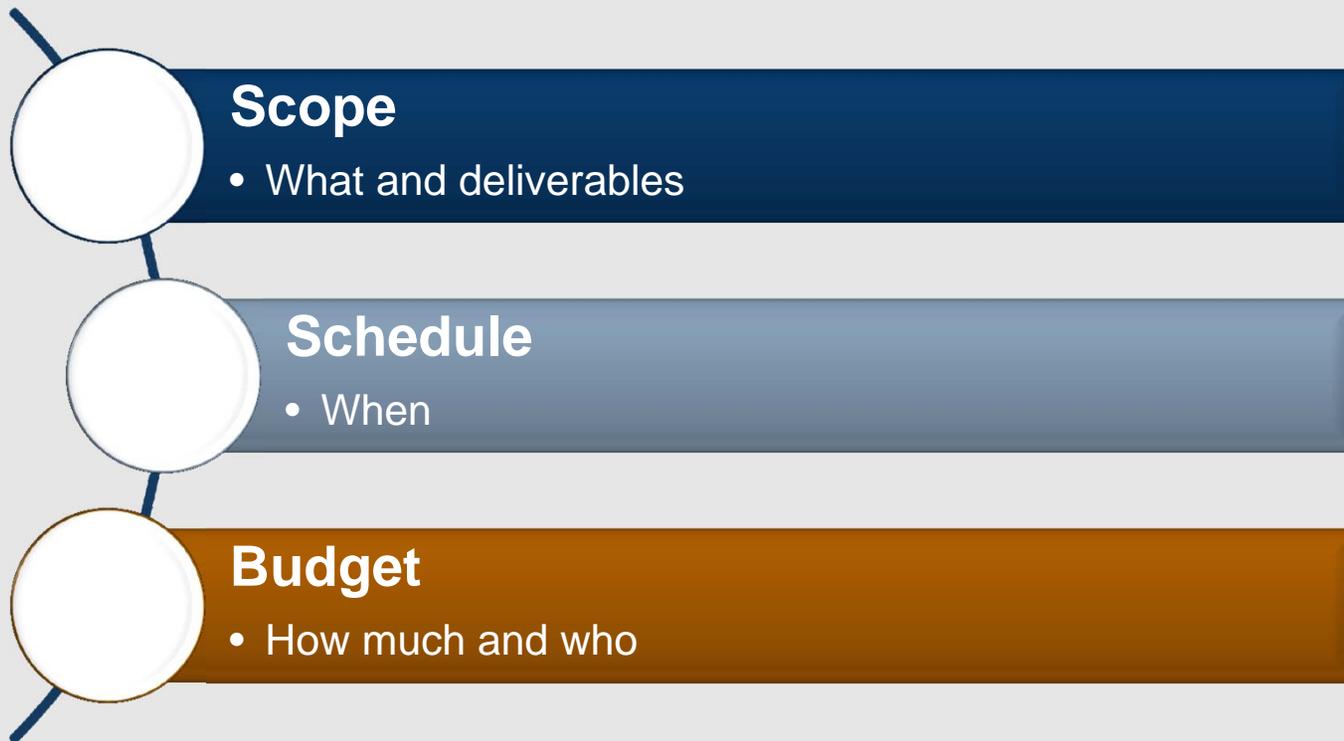


In summary: TxDOT's overall objective is to reach a fair and reasonable rate with the most highly qualified provider.

Level-of-EFFORT Negotiations

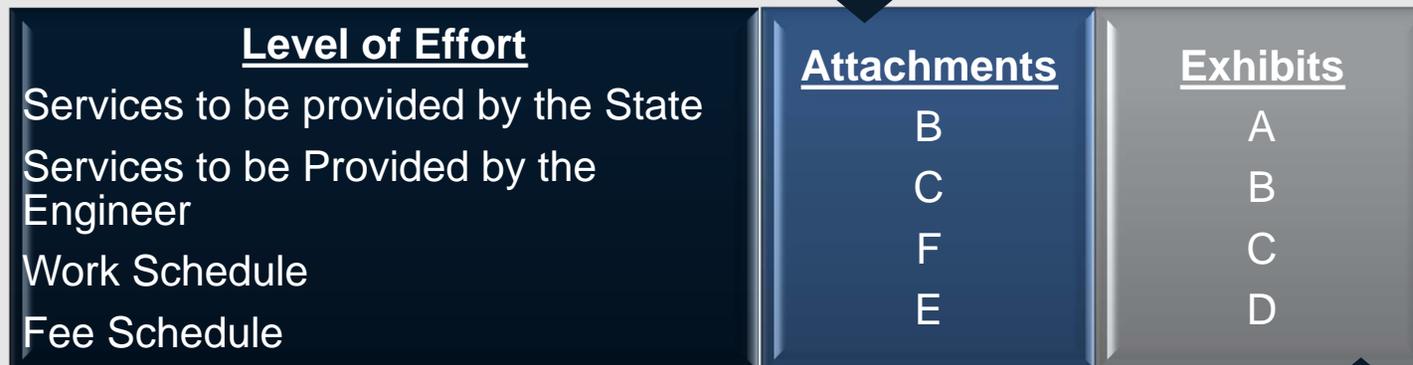
Philip Howlett, P.E.

Big Picture: Level of Effort (LOE)



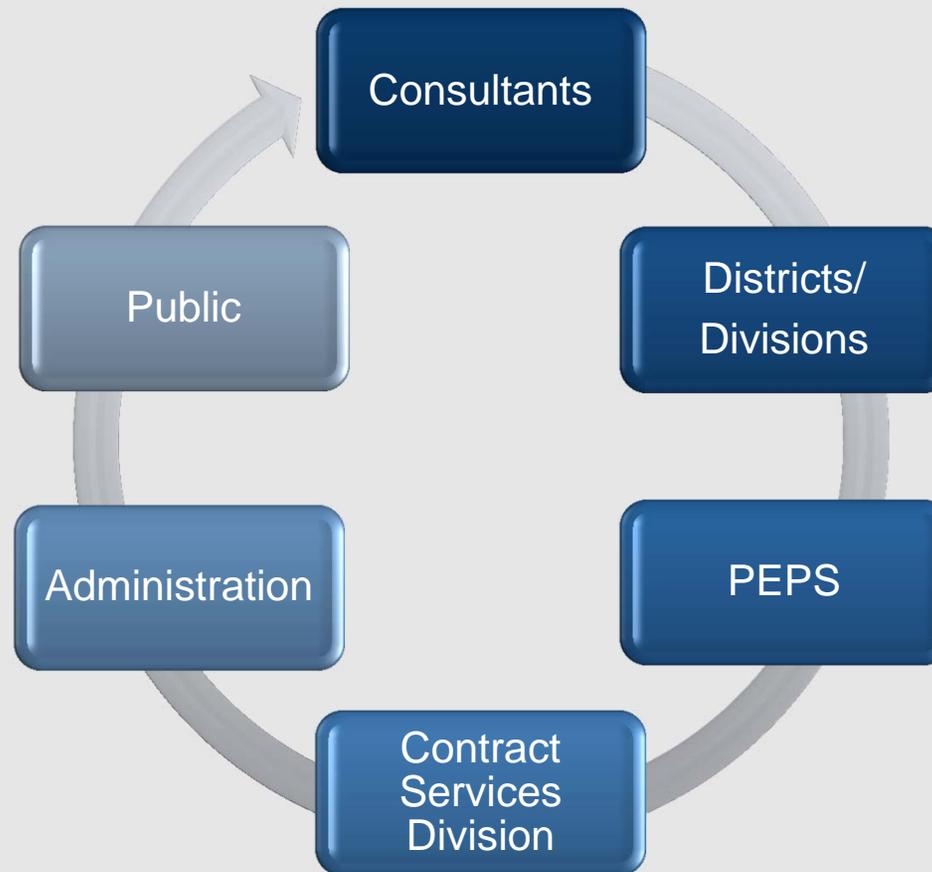
When do we negotiate Level-of-EFFORT?

Master Contract and
Supplemental Agreements

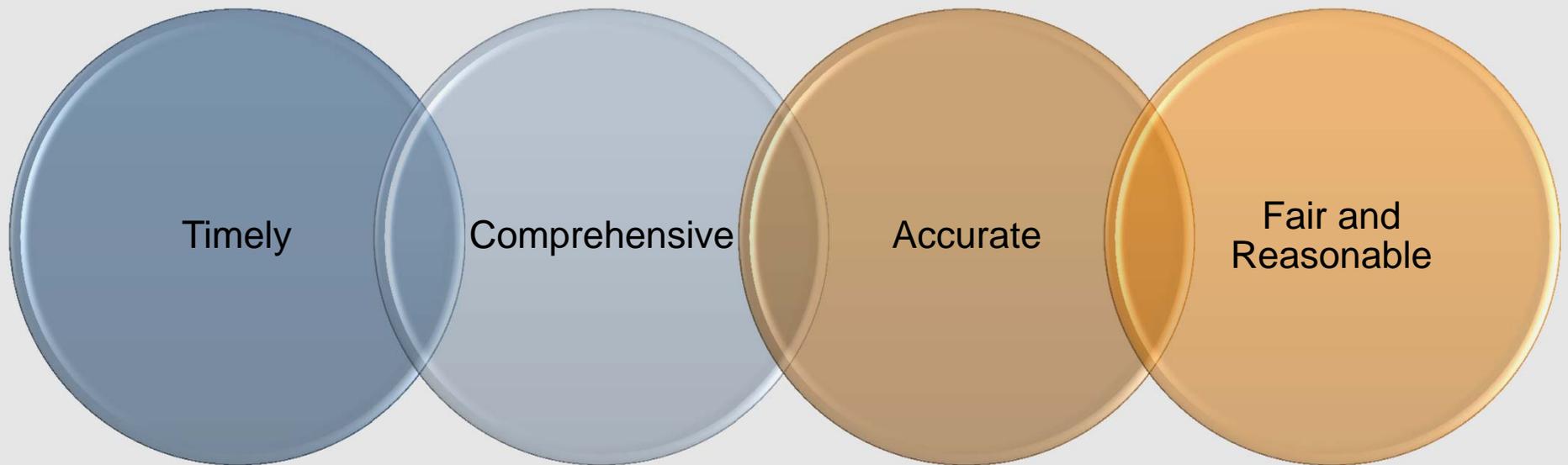


Work Authorizations and
Supplemental Work Authorization

Big Picture – Who's Affected by Level-of-Effort



Big Picture – We Need Contracts that are:



Video Clip: “Just Go With It” - The Negotiation Scene



Level-of-EFFORT (LOE) Negotiation



Fair and Reasonable



Time Consuming

There is no easy button



Challenging



A little extra EFFORT now, can save a lot of EFFORT later.

Give me six hours to chop down a tree and
I will spend the first four sharpening the axe.
- Abraham Lincoln



Scoping Meeting



Communication



Project Information

Open the door to Communication

Key
Personnel

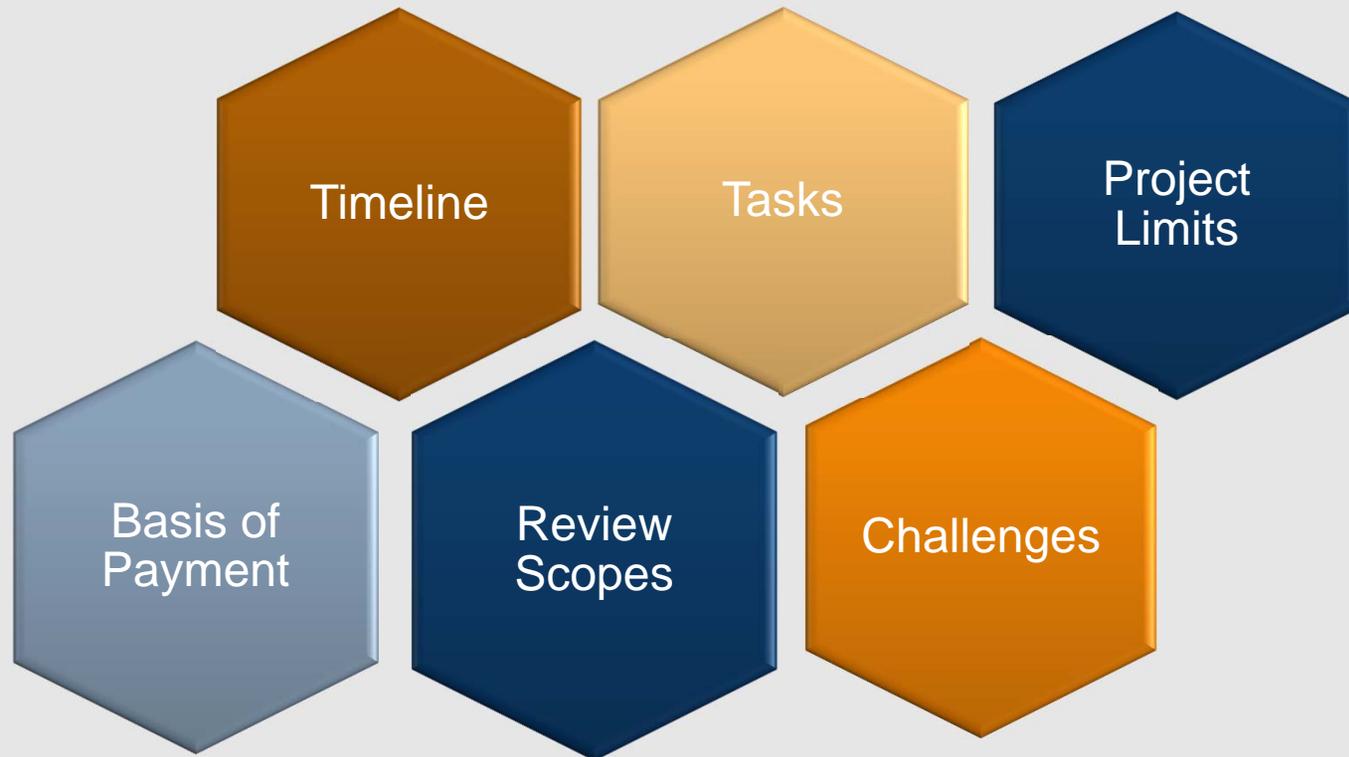
Points of
Contact

Preferred
Method

Frequency

Escalation
Process

Project Information



Other

Assumptions

Preferences

Quality

Vision



Scoping Meeting Best Practice

Have an agenda.

Ensure the right personnel attend.

Review the scopes ahead of time.

Visit/drive the project ahead of time.

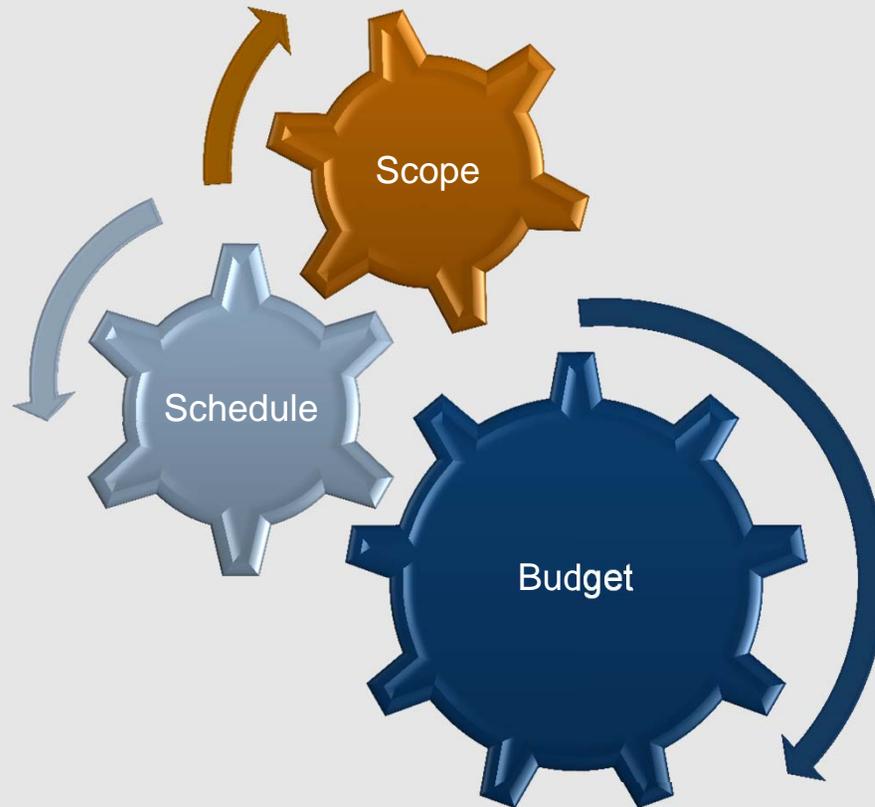
Bring a list of questions.

Summarize.

Document.

Most Important: Don't rush the meeting.

Level-of-EFFORT (LOE)



Level-of-EFFORT (LOE) - Scope

Track Changes to what is added, modified, or removed.

Work Authorizations: Begin with Master Contract's Scope.

Clearly define all deliverables.

Level-of-EFFORT (LOE) - Schedule

Start Date
and End Date

Review Times

Milestone and
Submittal Dates

Work Authorization
Termination Date
cannot exceed the
Master Contract
Termination Date

Indefinite Deliverable
Contracts are limited to
5 years (maximum)

Level of Effort (LOE) - Budget



*Not for Lump Sum Contracts

Function Codes

Other Direct Expenses

Unit Costs

Labor

Level of Effort (LOE) - Budget

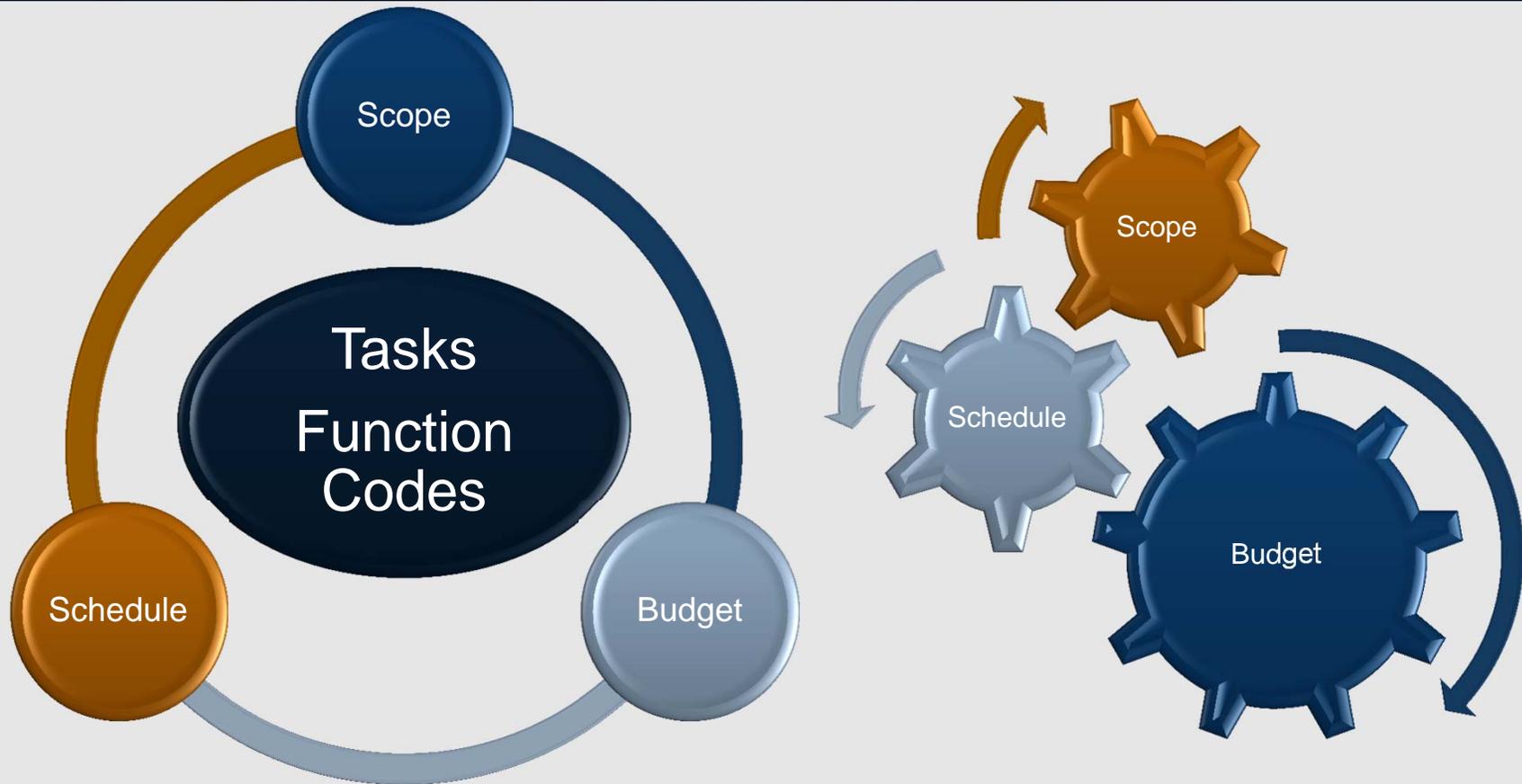
Summary Sheet

- Separated by firm, function code, and each Control Section Job (CSJ)

Lump Sum: Include a table of deliverables

- Use the latest table of deliverable template
- Ensure each deliverable description is distinguishable from one another

Level-of-EFFORT (LOE) – Working Together



Level of Effort (LOE)

	Master Contract*	Work Authorization	Payment
Direct Labor*	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Other Direct Expense*	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Unit Cost*	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Scope	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

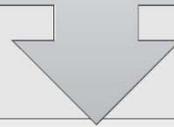
* ID Master Contracts – Negotiated rate

* SD Master Contracts – Negotiated rate and in the Level of Effort

Fair and Reasonable

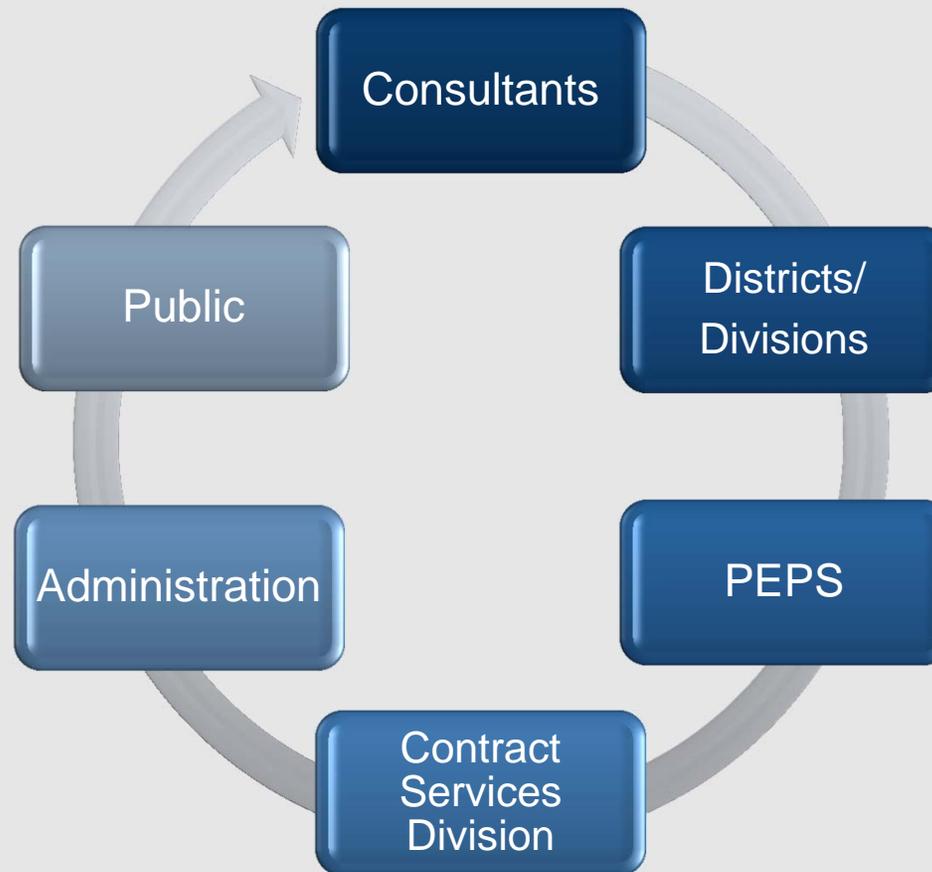


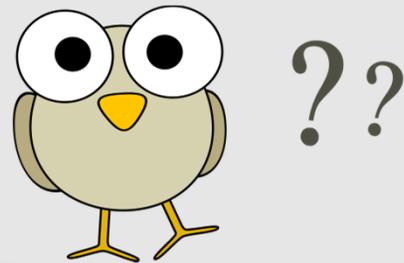
Perform a quality review.



Minimize Supplemental Agreements
and
Supplemental Work Authorizations.

Conclusion: Level-of-Effort affects more than just You ...





Questions

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