



# Level of Effort Negotiations

## 2019 PEPS Conference

Jessica Andrews, P.E., Fort Worth Service Center Manager  
Kendall Baker, P.E., Asst. Rural Service Center Manager  
Jimmy Thompson, P.E., Lufkin Transportation Engineering Supervisor

November 20, 2019

### Presentation Topics



- 1 • Introduction to Level of Effort (LOE)
- 2 • Specific Deliverable
- 3 • Indefinite Deliverable
- 4 • District Viewpoint

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# Introduction to Level of Effort Negotiations

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## Negotiation Definition

Cambridge Dictionary:

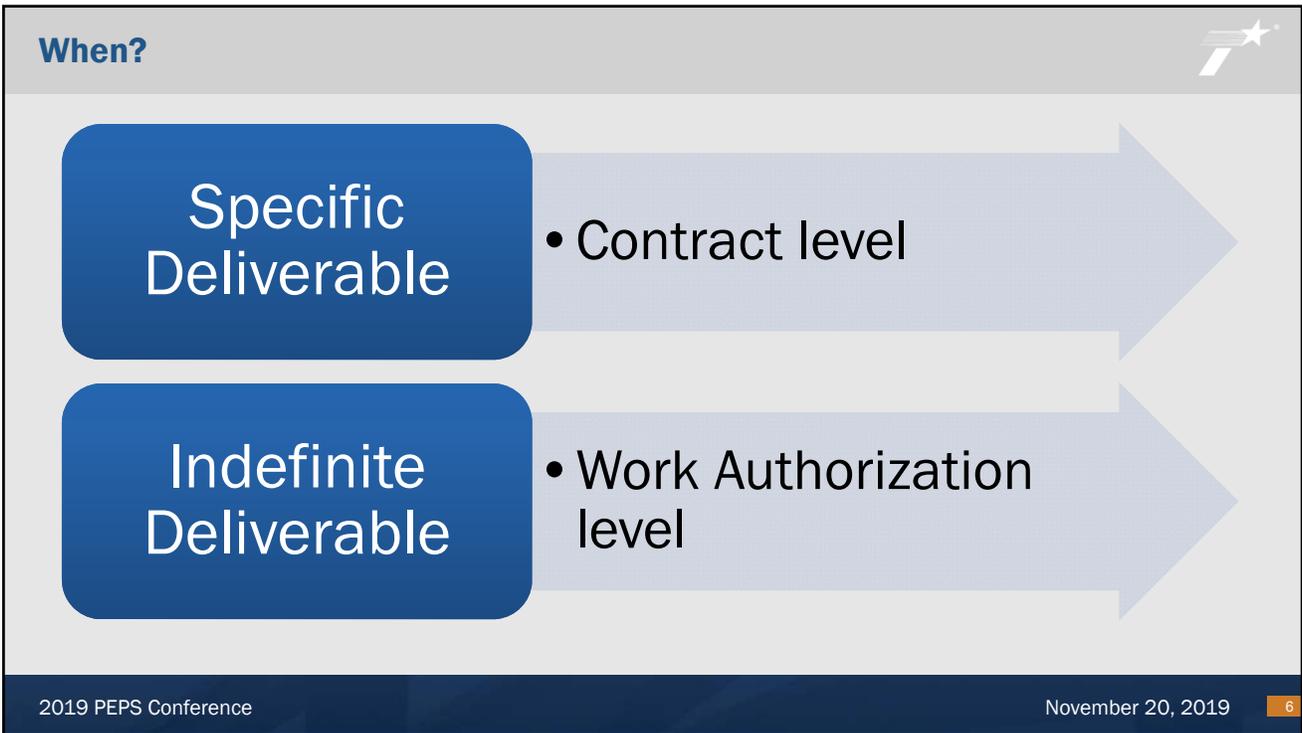
The process of discussing something with someone in order to reach an agreement with them

Merriam-Webster:

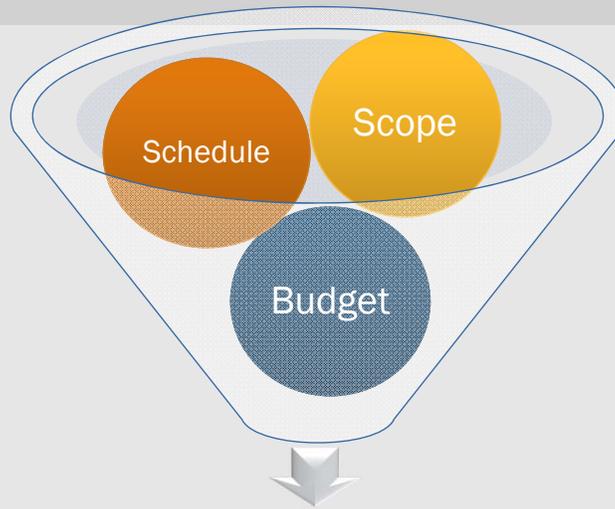
The process of conferring with another so as to arrive at the settlement of some matter

Businessdictionary.com:

Bargaining (give and take) process between two or more parties...seeking to discover a common ground and reach an agreement to settle a matter of mutual concern or resolve a conflict



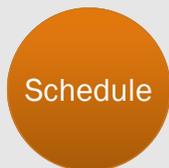
## What?



Level of Effort



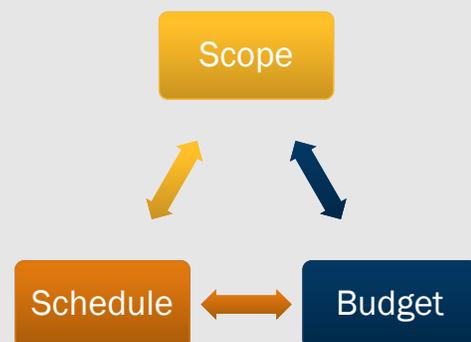
Defines the methods, procedures and tasks that will be completed by the provider to produce the project deliverables.



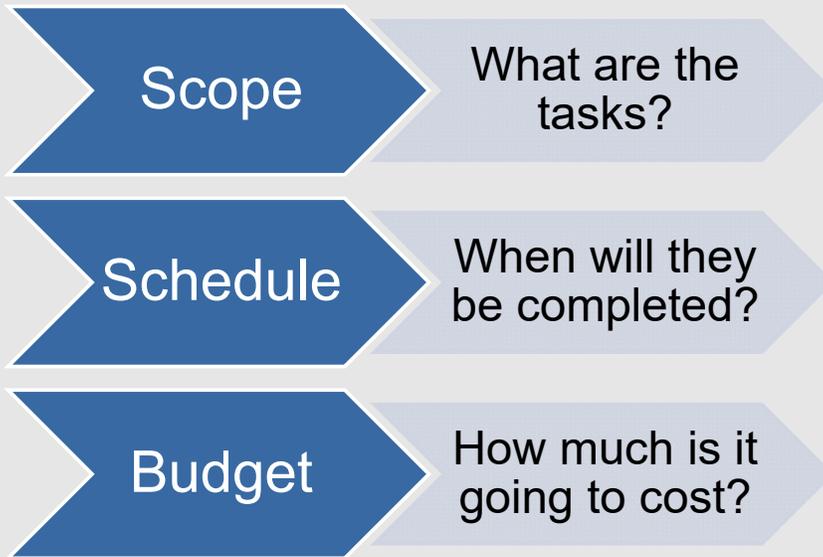
Must represent major milestones that correspond to the work included in the scope



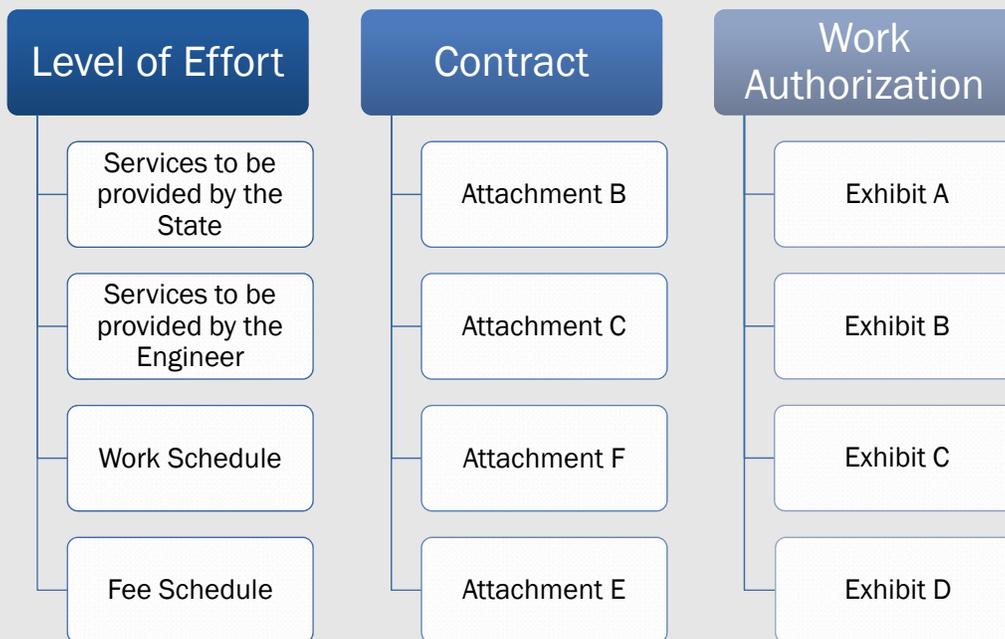
Costs required to complete the project based on the scope



## What?



## What?





Specified  
Rate & Cost  
Plus Fixed Fee

- Payment based on actual hours worked
- Close monitoring of project progress
- Review and approval of deliverables

Lump Sum

- Payment based on actual work produced
- Follows Table of Deliverables (TOD)

LOE: Specific Deliverable

*Jessica Andrews, P.E.*

At the Contract level, both parties have a clear understanding of the work and deliverables expected in order to develop a cost proposal and evaluate the reasonableness of a cost proposal.



### Specific Deliverable - Scope

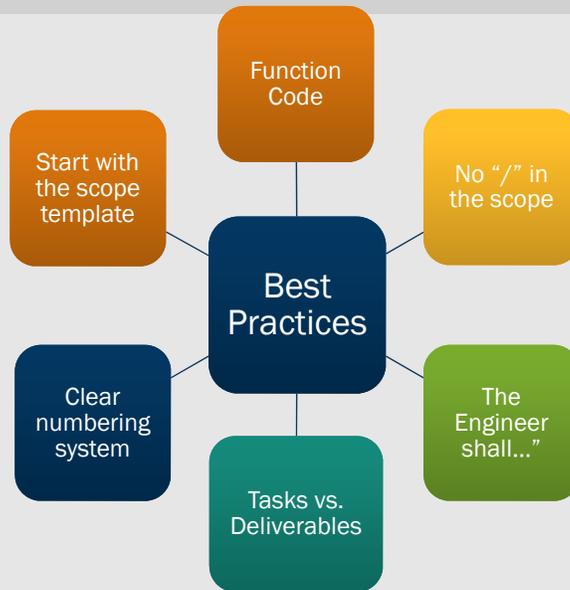
TxDOT: Provide a copy of Attachment B and Attachment C in MS Word format to the Prime Provider

Prime Provider: combine comments from Prime SME and all sub consultants and send to TxDOT prior to scoping meeting

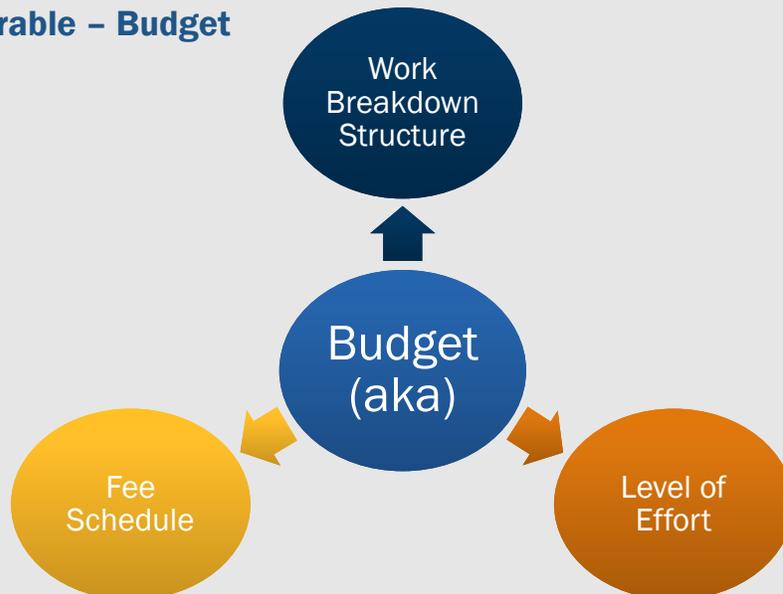
TxDOT and Prime Provider: Scoping meeting-all relevant parties in attendance

TxDOT and Prime Provider: Clearly state all tasks, deliverables in scope and document assumptions

## Specific Deliverable - Scope



## Specific Deliverable - Budget



## Specific Deliverable – Budget

### Work Breakdown Structure (WBS) Excel file

- Agree on formatting PRIOR to starting LOE
- TxDOT send template to Consultant Project Manager
- Multiple CSJs? – separate
- Escalation? – separate
- Multiple work authorizations? – separate
- Labor, unit cost, and ODEs? - separate
- Summary sheet – CSJs, Firms, Function codes, HUB/DBE
- Tasks must follow the scope
- Rates rounded to nearest penny

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## Specific Deliverable – Budget



# FAQ

**Question:**  
Do I need to show at least one hour/unit in a category in order to be able to invoice that category?

**Response:**  
It's acceptable to include a category with zero hours or units in the Attachment E fee schedule of the contract \*

\*MUST show category in Work Authorization in order to invoice it.

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## Specific Deliverable – Budget

Consultant LOE vs TxDOT Independent LOE  
What if your numbers don't match?

Review LOE line by line

Significant differences (low or high) should be addressed

Significant differences are typically an indication of different interpretations of the scope. (see scope slide)

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## Specific Deliverable – Budget



Consultant LOE vs TxDOT Independent LOE  
What if your numbers don't match?

Both sides should be willing to give and take (see negotiation definition)

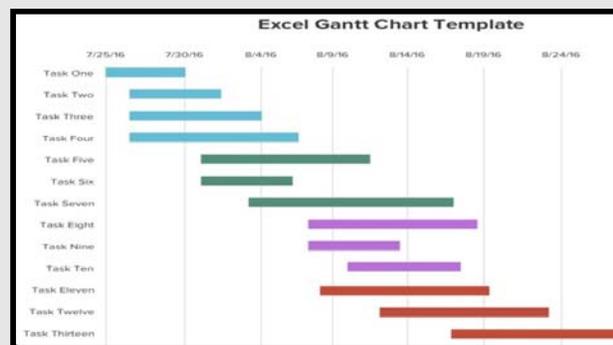
If an agreement cannot be made, terminating negotiations is an option. Either side has the option to walk away. (nothing personal it's a business decision)

If an agreement is reached = successful negotiation

## Specific Deliverable – Schedule



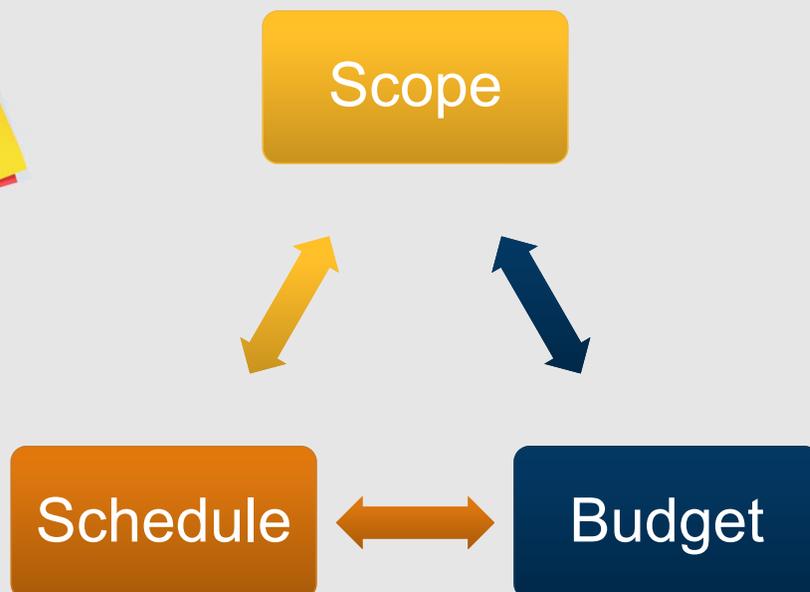
- Should be realistic
- Include major milestones
- Consultant develops the schedule
- TxDOT has a role in critical path
- Gantt chart recommended



## Specific Deliverable – Schedule



- Contract start date
- Identification of tasks and sub-tasks corresponding with the scope of work
- Provider deadlines for submitting deliverables
- TxDOT review periods
- Project milestones, including percentage of project completion
- Contract termination date





### Question:

Can we invoice more than estimated on a function code?

### Response:

Yes, please note:

- The final LOE is the Not to Exceed fee. How the numbers are allocated is an estimate.
- Actual hours charged must be monitored for reasonableness.
- At invoicing, if a Function Code is exceeded, verify no underlying problem.
- Invoiced amount for a function code may be greater than expected provided that the total does not exceed the maximum not to exceed fee.

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### Question:

If a classification is not in the Work Authorization can it be invoiced?

### Response:

NO. A classification MUST be shown on the work authorization level of effort in order to be invoiced.

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# LOE: Indefinite Deliverable

*Kendall Baker, P.E.*

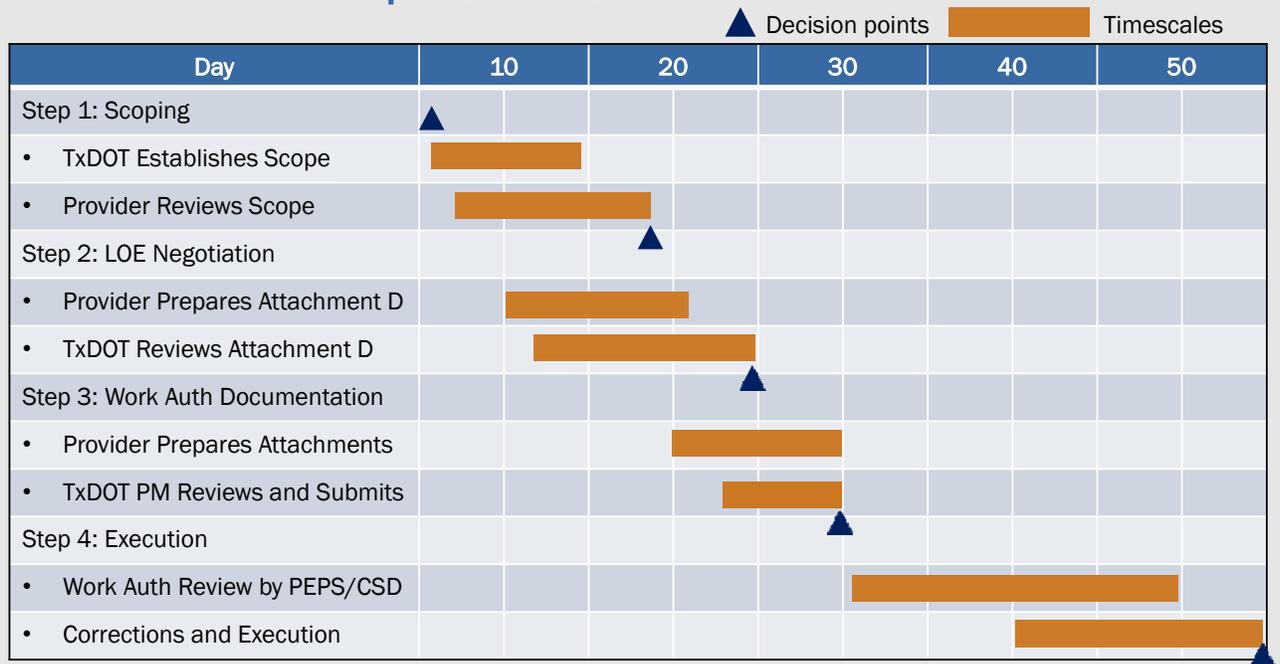
## Indefinite Deliverable (ID) – Work Authorization Assignment

TxDOT PM prepares  
Identification of  
Contract Need form  
and submits to PEPS

PEPS evaluates  
ID contracts

PEPS assigns  
ID contract for  
the Work  
Authorization

## Work Authorization Preparation Timeline



## Indefinite Deliverable (ID) - Scope

TxDOT PEPS: Provide a copy of Attachment B and Attachment C in MS Word format to the TxDOT PM

TxDOT PM reviews ID scope to ensure that ID contract includes all applicable scope language needed for the project

TxDOT PM and Prime Provider: Scoping meeting-all relevant parties in attendance

TxDOT and Prime Provider: Clearly state all deliverables and document assumptions

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## Indefinite Deliverable (ID) - Scope

ID Contract Scope = Standard Scope Template

Work Authorization Scope: MUST FOLLOW CONTRACT SCOPE

TxDOT and Prime Provider: Discuss, define, and clarify the needs of the project

TxDOT and Prime Provider: Determine WA scope. Cannot add any new scope, can only clarify scope.

## Indefinite Deliverable (ID) Payment Types

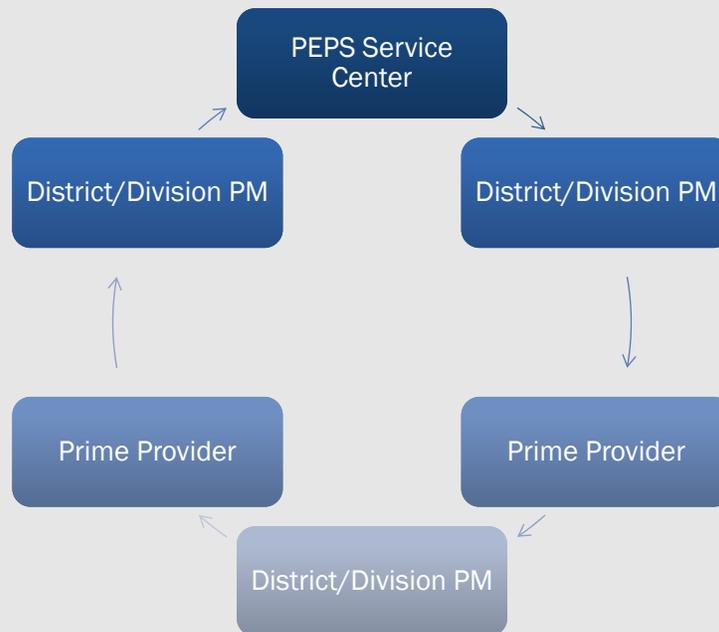
Lump Sum

Unit Cost

Specified Rate

Cost Plus Fixed Fee

## Indefinite Deliverable (ID) – LOE Negotiation



## Developing a Work Authorization – LOE/Exhibit D



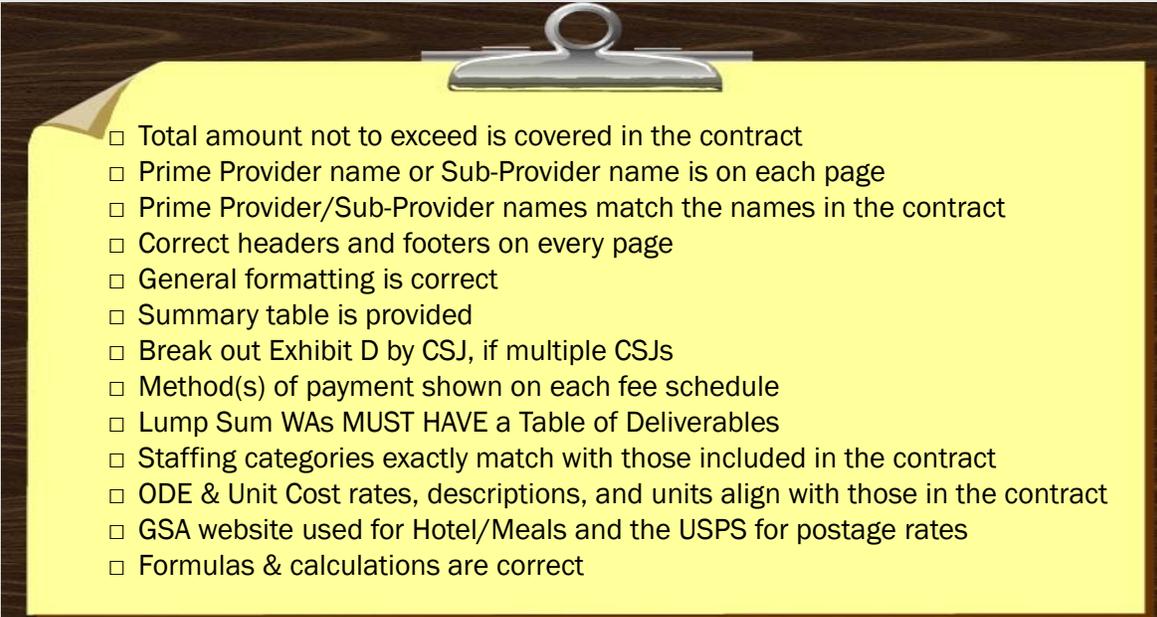
- The Engineer prepares Exhibit D in Excel (separate tab for each provider and Method of Payment)
- First tab is the **Summary** tab of all the subsequent tabs by Firm, Function Code, and CSJ
- Contract Specialist confirms all Function Codes listed in Exhibit B are listed in Exhibit D
- Contract Specialist ensures that whole units/hours are charged. **No partial hours or ODEs accepted**
- The Contract Specialist confirms the rates and Labor Classifications are in accordance with the contract
- ODEs **MUST** align with the contract and **MUST** be assigned a Function Code
- Rates, Labor Classifications and Other Direct Expenses can only be invoiced if they are on both the Contract **and** Work Authorization
- The Contract Specialist performs a thorough quality review of spreadsheet calculations

## LOE/Exhibit D Example

Contract No. Work Authorization No.		Exhibit D - Fee Schedule Method of Payment: Lump Sum Summary		PS Contract No. PS PO No.	
Prime Provider:			<b>SUBTOTALS</b>	<b>Firm Name</b>	<b>Firm Name</b>
Function Code:      Description:					
FC 145	Project Management and Administration	Total Labor Cost	\$400.85	\$400.85	\$0.00
		Other Direct Expenses	\$0.00		
FC 160	Roadway Design Controls	Total Labor Cost	\$3,673.78	\$3673.78	\$0.00
		Other Direct Expenses	\$0.00		
FC 161	Drainage	Total Labor Cost	\$1,186.23	\$1,186.23	\$0.00
		Other Direct Expenses	\$0.00		
FC 163	Miscellaneous (Roadway)	Total Labor Cost	\$1,080.37	\$1,080.37	\$0.00
		Other Direct Expenses	\$0.00		
FC 170	Bridge Design	Total Labor Cost	\$8,372.49	\$458.72	\$7,913.77
		Other Direct Expenses	\$312.94		
Grand Totals			\$15,026.66	\$6,799.95	\$7,913.77
(HUB%)			52.66%		52.7%

\*Note that this summary is for a single CSJ. If there are multiple CSJs on a WA, there must be a summary for each CSJ broken down by Provider and Function Code.

## Work Authorization Review Checklist

- 
- Total amount not to exceed is covered in the contract
  - Prime Provider name or Sub-Provider name is on each page
  - Prime Provider/Sub-Provider names match the names in the contract
  - Correct headers and footers on every page
  - General formatting is correct
  - Summary table is provided
  - Break out Exhibit D by CSJ, if multiple CSJs
  - Method(s) of payment shown on each fee schedule
  - Lump Sum WAs MUST HAVE a Table of Deliverables
  - Staffing categories exactly match with those included in the contract
  - ODE & Unit Cost rates, descriptions, and units align with those in the contract
  - GSA website used for Hotel/Meals and the USPS for postage rates
  - Formulas & calculations are correct

## District Viewpoint – Lufkin District

*Jimmy Thompson, P.E.*

## District Perspective – Scope



At the Work Authorization (WA) level, the District is responsible to prepare and submit a scope of work (Exhibit A and B) to provide the Consultant with a clear understanding of the work and deliverables expected in order to develop a cost proposal and evaluate the reasonableness of a cost proposal.

True or False:

**TRUE**

Preparation and Submission of the Scope (Exhibits A and B) are considered negotiations?

## District Perspective – Timing

Once a Consultant has been selected by PEPS for a respective ID Contract, the District has 25 working days to complete negotiations and submit negotiated documents to PEPS for processing.

# 25 DAYS?

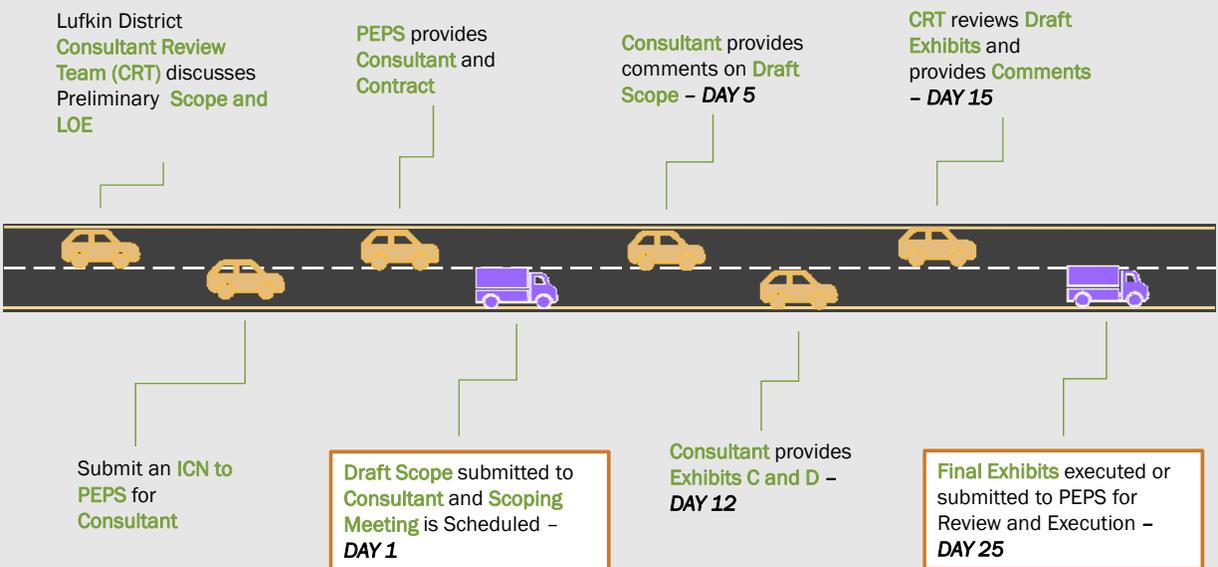
How do we work together to get this done in 25 days?

How long does the District have to prepare the scope (Exhibits A and B)?

Does the District have any idea on how long this will take (Exhibit C)?

Does the District have any idea how much LOE (Exhibit D) is required and what is the basis?

## District Perspective - Process



# District Perspective - Partnership



**ATTACHMI**  
SERVICES TO BE PROVIDED BY THE STATE

For each negotiated Work Authorization the State represents the State and will provide the following by Function Code (FC).

Subject to availability, the services to be provided include, but not be limited to, the following:

**Route and Design Studies**

- Provide As-built Plans.
- Provide Preliminary Cost Estimate, Project Description, and Environmental Impact Statement.
- Provide available Environmental Document.
- Provide Map File, Topographic (Planned) and Aerial Photographs.
- Provide approved traffic data.
- Provide DCIS project information.
- Provide Design Summary Report.
- Provide Value Engineering Report, if available.

**Social, Economic and Environmental Studies**

- Provide available project development documentation, schematics, typical sections, and other data.
- Review and process each necessary environmental document prior to letting of the construction contract.
- Locate suitable facilities, advertise, and provide a court reporter if necessary for the design process.
- Review the information and representative data at each public meeting or public hearing State will return review comments to the meetings or hearings, if applicable.

**Right-of-Way Data and Utility**

- Provide available existing right of way plat.
- Conduct all right-of-way appraisals and result in damages to private property.
- Any coordination on approvals required when crossing state owned lands or navigable water.
- If available, Subsurface Utility Engineering ownership/facility data, and

**ATTACHMENT C**  
SERVICES TO BE PROVIDED BY THE ENGINEER

The Engineer shall provide engineering services required for the design process. These services may include, but not be limited to, the following:

**GENERAL REQUIREMENTS**

**1.1. Design Criteria.** The Engineer shall provide engineering services required for the design process. These services may include, but not be limited to, the following:

1.1.1. Design Criteria. The Engineer shall provide engineering services required for the design process. These services may include, but not be limited to, the following:

1.1.2. Right-of-Entry and Coordination. The Engineer shall provide engineering services required for the design process. These services may include, but not be limited to, the following:

**Project Man-Hour Projection Summary**

CSJ No.: 0911-38-009; 0911-28-041; 0911-28-042; 0390-05-006; 0911-30-031; 0911-30-032  
PROJECT NAME: Robinson Lane at Gilman Bayou; CR 2245 at Big Elkheart Creek; CR 1515 Sullivan Road; FM 2658 at Little Oak Creek; CR 206 at Blash Creek; CR 144 at ...

TASK DESCRIPTION	Design Labor Hours	Detail Labor Hours	Total Labor Hrs.	Total Labor Cost	Total Other Dir. Exp.	Total Cost
128	303.5	429.5	733.0	\$ 56,718.00	\$ -	\$ 56,718.00
112	112	112	224.0	\$ 17,456.00	\$ -	\$ 17,456.00
204	204	204	408.0	\$ 31,776.00	\$ -	\$ 31,776.00
1015	1015	1015	2030.0	\$ 158,310.00	\$ -	\$ 158,310.00
838	838	838	1676.0	\$ 130,080.00	\$ 287.50	\$ 130,367.50
904	904	904	1808.0	\$ 140,640.00	\$ -	\$ 140,640.00
34	34	34	68.0	\$ 5,252.00	\$ -	\$ 5,252.00
895	895	895	1790.0	\$ 138,780.00	\$ 550.00	\$ 139,330.00
595	595	595	1190.0	\$ 92,550.00	\$ -	\$ 92,550.00
218	218	218	436.0	\$ 33,768.00	\$ -	\$ 33,768.00
40	40	40	80.0	\$ 6,200.00	\$ -	\$ 6,200.00
5340	303.5	3643.5	7287.0	\$ 566,880.00	\$ 61,686.00	\$ 628,566.00
	\$ 2,272.50	\$ 34,822.50		\$ 781,296.49	\$ -	\$ 781,296.49
	\$ 728,945.09	\$ 94,136.00		\$ -	\$ 61,686.00	\$ 824,767.09
	88.0%	11.4%				100.0%

Contract Rate	Unit	Quantity	Amount
\$ 0.12	each	200	\$ 24.00
\$ 0.25	each	2000	\$ 500.00
\$ 0.15	each	100	\$ 15.00
\$ 1.50	each	50	\$ 75.00
\$ 30.00	each	8	\$ 240.00
\$ 0.875	mile	4000	\$ 3,500.00
\$ 2,250,000	day	2	\$ 4,500,000.00
\$ 0.15	each	3	\$ 45.00
\$ 85.00	day/person	42	\$ 3,570.00
\$ 20.00	day/person	42	\$ 840.00
\$ 45.00	day/person	42	\$ 1,890.00
\$ 4.85	per mile	1300	\$ 6,305.00
\$ 25.00	Foot	840	\$ 21,000.00
\$ 30.00	Foot	140	\$ 4,200.00
\$ 23.00	Test	195	\$ 4,485.00
\$ 15.00	Box	42	\$ 630.00
\$ 12.00	each	195	\$ 2,340.00
\$ 50.00	each	42	\$ 2,100.00
\$ 40.00	each	42	\$ 1,680.00
\$ 65.00	each	7	\$ 455.00
\$ 120.00	each	7	\$ 840.00
\$ 14.00	each	55	\$ 770.00
\$ 70.00	each	55	\$ 3,850.00
\$ 85.00	each	7	\$ 595.00
			\$ 61,686.00

collaboration, teamwork, management, performance, innovation, value, Partnership, business, plan, strategy, consultant, goal, marketing, mission, share, finance, investment

# District Perspective - Milestone Submittals

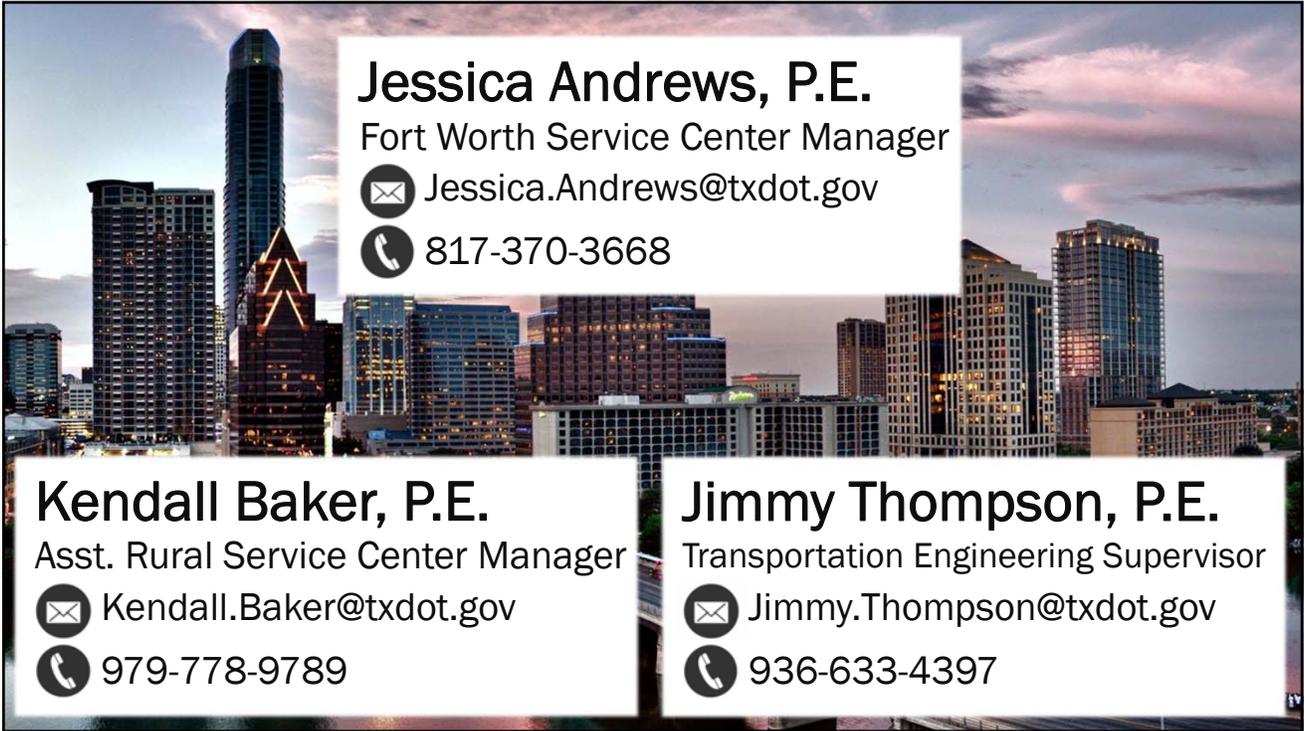
Start	P6 30%	P6 60%	P6 95%	P6 100%	P6 ENV NEPA	P6 ENV RTL	P6 RTL	STIP
04-Jun-04 A								
15-Jun-16 A								
10-Jan-17 A								
06-Mar-15 A								
26-Oct-15 A								
08-Feb-17 A								
05-Dec-16 A								
17-Jan-12 A								
15-Aug-17 A	10/04/2017 A	12/20/2017 A	01/26/2018 A	01/09/2018 A	01/09/2018 A	02/09/2018 A	20171026	
17-Jan-12 A	11/09/2016 A	01/06/2017 A	02/14/2017 A	02/14/2018 A	03/29/2018 A	03/29/2018 A	20161219	
04-Jun-04 A								
03-Feb-17 A	08/16/2017 A	01/10/2018 A	02/20/2018 A	03/13/2018 A	03/13/2018 A	03/13/2018 A	20161219	
03-Feb-17 A	08/16/2017 A	01/10/2018 A	02/20/2018 A	03/13/2018 A	03/13/2018 A	03/13/2018 A	20161219	
03-Feb-17 A	08/16/2017 A	01/10/2018 A	02/20/2018 A	03/01/2018 A	03/01/2018 A	03/09/2018 A	20161219	
05-Oct-05 A	03/04/2013 A	08/23/2013 A	02/07/2017 A	01/22/2018 A	10/05/2005 A	05/01/2017 A	03/09/2018 A	20180227
04-Jun-04 A	03/04/2013 A	08/23/2013 A	02/07/2017 A	01/22/2018 A	10/05/2005 A	05/01/2017 A	03/09/2018 A	20180227
08-May-17 A	10/19/2017 A	01/09/2018 A	02/20/2018 A	03/09/2018 A	03/09/2018 A	03/09/2018 A	20161219	
08-May-17 A	10/19/2017 A	01/09/2018 A	02/20/2018 A	03/09/2018 A	03/09/2018 A	03/09/2018 A	20161219	
05-Dec-16 A	08/10/2017 A	01/31/2018 A	02/13/2018 A	03/05/2018 A	03/05/2018 A	03/09/2018 A	20161219	

## District Perspective – Level of Effort (Fee)



Construct	Previous 3 Year Average Manhours (PS&E Only)		This Contract Average Manhours (PS&E Only)	
	Off-System	On-System	Off-System	On-System
	828	1,265	953	1,328





**Jessica Andrews, P.E.**  
Fort Worth Service Center Manager  
✉ [Jessica.Andrews@txdot.gov](mailto:Jessica.Andrews@txdot.gov)  
☎ 817-370-3668

**Kendall Baker, P.E.**  
Asst. Rural Service Center Manager  
✉ [Kendall.Baker@txdot.gov](mailto:Kendall.Baker@txdot.gov)  
☎ 979-778-9789

**Jimmy Thompson, P.E.**  
Transportation Engineering Supervisor  
✉ [Jimmy.Thompson@txdot.gov](mailto:Jimmy.Thompson@txdot.gov)  
☎ 936-633-4397