PROFESSIONAL SERVICES CONTRACT NEGOTIATION

2018 PEPS Conference
Shirin Helmi, P.E. & Philip Howlett, P.E.
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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2018 PEPS Conference

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

<table>
<thead>
<tr>
<th>Schematic and Environmental (S&amp;E)</th>
<th>Value Engineering</th>
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<tr>
<td>Plans Specifications &amp; Estimates (PS&amp;E)</td>
<td>Planning</td>
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<tr>
<td>Utility Engineering</td>
<td>General Engineering Consultant (GEC)</td>
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<td>Traffic Engineering</td>
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<td>Survey</td>
<td>Intelligent Traffic Systems (ITS)</td>
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<tr>
<td>Geotechnical Engineering</td>
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<td>Materials Engineering</td>
<td>Other</td>
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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

Topics to be covered by Shirin

Topics to be covered by Phil
Separate Pieces but Parts of the Whole

- Do not fixate on one number
- Each contract stands alone
- Business models and management philosophies vary by firm
- Numbers will vary from firm to firm

Numbers do not stand alone
Evaluate as variables in overall value equation
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
- Timing of Negotiations
- Other Direct Expenses
- Unloaded & Loaded Rate
- Labor Categories
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

Hourly Base Labor Rates*

Profit*

Overhead

Contract Rate

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

\[
\text{Labor Rate} \times (1 + \text{OH Rate}) \times (1 + \text{Profit Rate}) = \text{Specified Rate (Contract Rate or Loaded Rate)}
\]

Example: 
\[
$40/\text{hr} \times (1 + 1.55) \times (1 + 0.10) = 112.20/\text{hr}
\]
Information is not available to evaluate Labor, Overhead, and Profit Rates separately.
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

Best & Final Offers
Best and final offer received from Engineer

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
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.
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)

**Scope**
- What and deliverables

**Schedule**
- When

**Budget**
- How much and who
When do we negotiate Level-of-EFFORT?

Master Contract and Supplemental Agreements

Level of Effort
- Services to be provided by the State
- Services to be Provided by the Engineer
- Work Schedule
- Fee Schedule

Attachments
- B
- C
- F
- E

Exhibits
- A
- B
- C
- D

Work Authorizations and Supplemental Work Authorization
Big Picture – Who’s Affected by Level-of-Effort

- Consultants
- Districts/Districts
- Administration
- Public
- Contract Services Division
- PEPS
Big Picture – We Need Contracts that are:

- Timely
- Comprehensive
- Accurate
- Fair and Reasonable
Video Clip: “Just Go With It” - The Negotiation Scene
Level-of-EFFORT (LOE) Negotiation

The Win/Win Solution

Fair and Reasonable

Time Consuming

Challenging

There is no easy button

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
Getting started on the right foot

Scoping Meeting

- Communication
- Project Information
Open the door to Communication

- Key Personnel
- Points of Contact
- Preferred Method
- Frequency
- Escalation Process
Project Information

- Timeline
- Tasks
- Project Limits
- Basis of Payment
- Review Scopes
- Challenges
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)

- Budget
- Schedule
- 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

Maximum Amount not to Exceed

Flexibility*

*Not for Lump Sum Contracts
Level of Effort (LOE) - Budget

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

- Scope
- Tasks
- Function Codes
- Schedule
- Budget
### Level of Effort (LOE)

<table>
<thead>
<tr>
<th>Master Contract*</th>
<th>Work Authorization</th>
<th>Payment</th>
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<tbody>
<tr>
<td>Direct Labor*</td>
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<td>✓</td>
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<tr>
<td>Other Direct Expense*</td>
<td>✓</td>
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<tr>
<td>Unit Cost*</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Scope</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

* ID Master Contracts – Negotiated rate

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

Fair and Reasonable

Effort    Fee
Best Practice

Perform a quality review.

Minimize Supplemental Agreements and Supplemental Work Authorizations.
Conclusion: Level-of-Effort affects more than just You ...
Questions and Discussion

Questions
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