

Contract Negotiation Rules of Engagement

Goal for negotiations: For TxDOT and the most highly qualified provider to reach a fair and reasonable cost, for the services to be provided.

Basic courtesies: Negotiations will be conducted with the parties treating each other with dignity, respect, and basic common courtesies.

Points of contact: PEPS Procurement Engineer and the Prime Provider Project Manager are the sole points of contact for the negotiations.

Communication protocol: During negotiations the communication is limited to the points of contact. Neither party is permitted to communicate with other representatives of a party except when approved by the sole point of contact for that party. During negotiation meetings it is expected that each party will have participation from additional members.

Schedule of negotiations: This provides a basic timeline for meetings, information exchanges, and overall deadlines for completing negotiations and contract execution.

Sequence for negotiations:

- Pre-negotiation meeting, to discuss the rules of engagement, the project, and the format for information exchange
- Scope meetings, discuss the project, work elements, and assumptions
- Labor Rate, Unit Cost, and Other Direct Expense negotiations, includes discussion on payment types, use approved OH rate, and negotiate profit
- Level of effort (LOE) negotiations
- Work schedule negotiations
- Conclude negotiations

Information transfer: During negotiations, it is expected that the bulk of the rate and LOE offers will be transmitted via email. Some elements of the negotiation process involve discussion by telephone and by in-person meetings. TxDOT will also specify the format for the information exchange.

Conflict resolution: It is anticipated that negotiations will be concluded within 2 to 3 rounds (offer and counter offer). If items are not resolved by the third round, the expectation is that both parties will hold an in-person meeting or discuss the issues by phone to reach a resolution.

Escalation: If necessary, a party can request to escalate an issue. For TxDOT it is the PEPS Service Center Manager. For the firm, it is the individual identified by their Project Manager.

Termination of negotiations: If the parties fail to reach a fair and reasonable price, either party may terminate negotiations. If TxDOT believes that an impasse has been reached, it will send an impasse letter with an opportunity to appeal to the PEPS Division Director. If resolution is not reached, then negotiations are terminated.