

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: Labor rate and unit cost negotiations are conducted for each firm on the team through the Negotiation Center (NC). The NC Negotiator, Procurement Engineer, and the Prime provider Project Manager are the designated points of contact for the contract. For the sub-provider labor rates, the NC Negotiator and the sub-provider contact for the contract are the designated points of contact.

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 designated point of contact for that party. During negotiation meetings, it is expected that each party will have participation from additional members.

Schedule of negotiations: The PEPS Procurement Engineer should provide a basic timeline for meetings, information exchanges, and overall deadlines for completing negotiations and contract execution.

Sequence for negotiations:

- Pre-negotiation meeting - discuss the expectations with the selected providers, including information about the project or use of the contracts, payment types to be included in the contract, and the required documentation for the contracts. Responsibility of the PEPS Procurement Engineer.
- Negotiations - may be held concurrently:
 - Scope negotiations - discuss the project, work elements, and assumptions. Responsibility of the Procurement Engineer and the District/Division.
 - Labor Rate, Unit Cost, Other Direct Expense, Profit, and Escalation negotiations - Responsibility of Negotiation Center.
 - Level of effort (LOE) negotiations - Responsibility of the Procurement Engineer and the District/Division.
 - Work schedule negotiations - Responsibility of the Procurement Engineer and the District/Division.
- Conclude negotiations - For ID contracts, the negotiations conclude with the labor rates, unit costs, and ODE negotiations. For SD contracts, the negotiations conclude with the LOE and work schedule negotiations.

Information transfer: During rate negotiations, it is expected that the negotiations will be conducted primarily through virtual meetings. LOE negotiations will be conducted through email, phone, and by in-person meetings.

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Conflict resolution: The NC will host a virtual meeting to discuss any rates that were not in the firm's portfolio. If items are not resolved during the virtual meeting, arrangements will be made to schedule another meeting and include the NC manager and any personnel from the firm to help resolve the issue. It is anticipated that LOE and work schedule negotiations will be concluded within two to three rounds (offer and counteroffer). If items are not resolved by the third round, both parties will hold an in-person meeting or discuss the issues by phone to reach a resolution.

Escalation: If necessary, either party can request to escalate an issue. For TxDOT, it is the PEPS Negotiation Center Manager during fee schedule negotiations, and the PEPS Service Center Manager during the Level of Effort and work schedule negotiations. 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 resolution, either party may terminate negotiations. If the PEPS Negotiation Center believes that an impasse has been reached during rate negotiations, an impasse letter that includes the opportunity to appeal will be sent to the firm and the PEPS Negotiation Steering Committee. If the impasse occurs during the LOE negotiations, an impasse letter will be sent to the firm and the PEPS Division Director. If resolution is not reached, then negotiations are terminated.

Note:

- The TxDOT PEPS Negotiation Center is responsible for the rate negotiations. Rates for Labor, Unit Cost, and Other Direct Expenses are based on the annual rate negotiations process conducted by the Negotiations Center. The Procurement Engineer will work with the District or Division to determine the labor categories required for a contract.
- The District or Division managing the contract is responsible for the LOE negotiations. The LOE negotiations should focus on the tasks, the labor classifications (people who will perform the work), and the number of hours. Rates are added after the hours are negotiated in order to develop the budget for the project.