



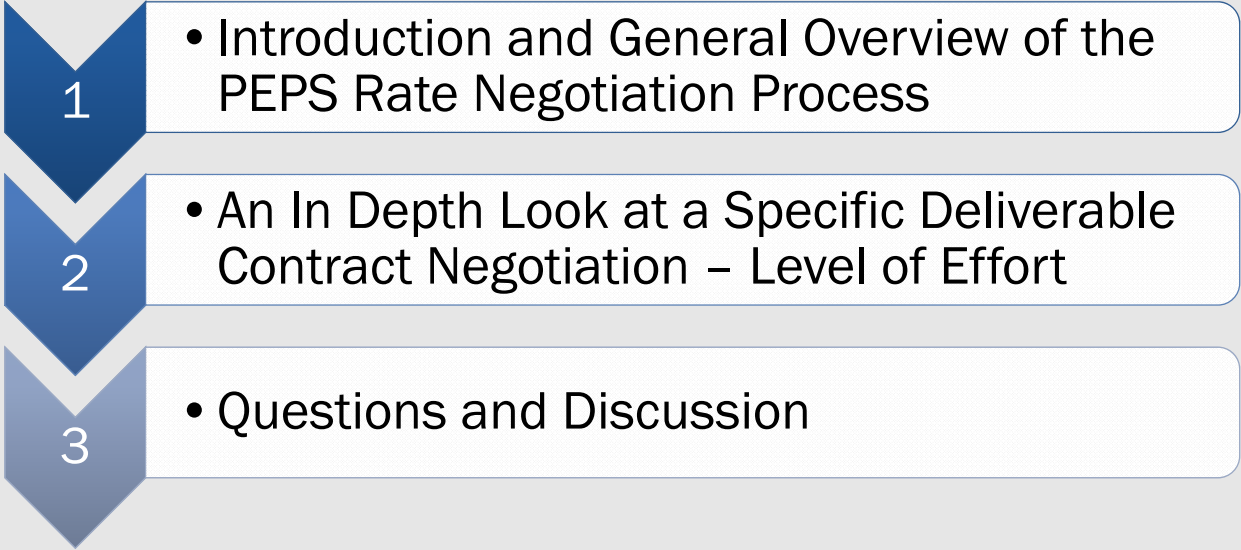
Understanding the PEPS Negotiation Process

2019 PEPS Conference

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November 21, 2019

Presentation Topics



- 1 • Introduction and General Overview of the PEPS Rate Negotiation Process
- 2 • An In Depth Look at a Specific Deliverable Contract Negotiation – Level of Effort
- 3 • Questions and Discussion

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Introduction and General Overview of the PEPS Rate Negotiation Process

Benjamin King, P.E.



Purpose



To provide understanding and help set expectations for negotiation of professional services contracts between TxDOT (represented by PEPS Division) and Consultants

TxDOT goal is consistency in approach to negotiation process

Negotiations – Who is Involved?



Procurement
Engineer

District/Division
Project
Manager

Consultant
Project
Manager

The Role of the Procurement Engineer



Project Manager of the procurement, including negotiations

Subject Matter Expert on Rate Negotiations

Leader of Negotiations and Point of Contact for the Consultant

Responsible for ensuring fair and reasonable price is negotiated

Responsible for completing negotiations

Responsible for moving to next provider if contract cannot be negotiated

The Role of the District/Division Project Manager



TxDOT Project
Manager for
work being
procured

Provides
expertise on
work being
procured

Provides project-
specific input
during contract
negotiations

The Role of the Consultant Project Manager



Lead for work being procured

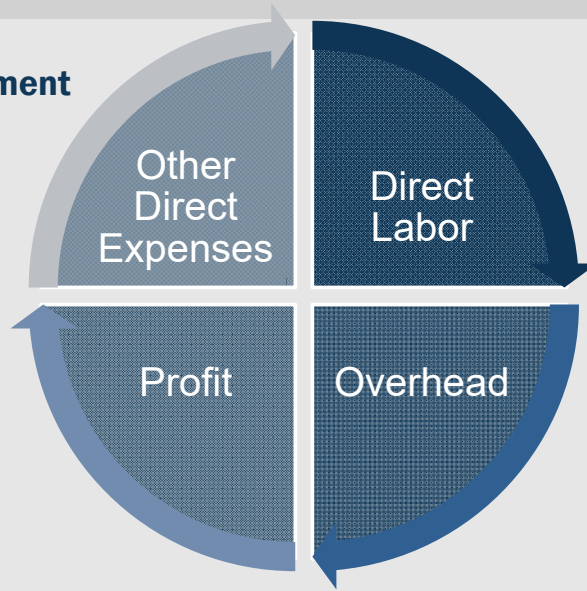
Subject Matter Expert on work
their team selected for

Primary contact and lead
negotiator for Consultant

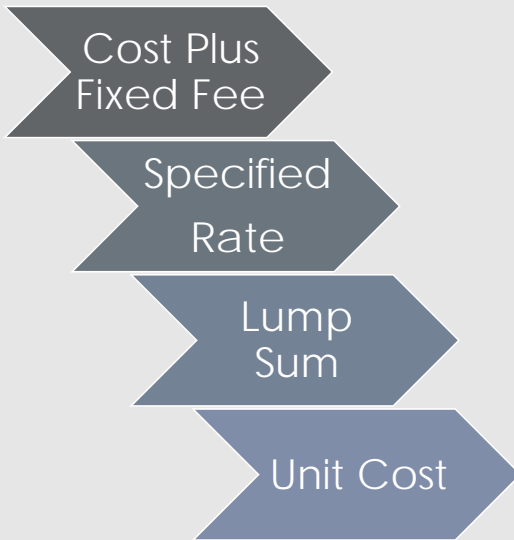
Establishing the Groundwork - What are we negotiating? What do payments include?



Elements of a Payment



What are the payment types associated with TxDOT work?



WAs Used _____ Contract No. _____

**ATTACHMENT E
FEE SCHEDULE
(Final Cost Proposal)**

This attachment provides the basis of payment and fee schedule. The basis of payment for this contract is indicated by an "X" in the applicable box. The basis shall be supported by the Final Cost Proposal (FCP) shown below. If more than one basis of payment is used, each one must be supported by a separate FCP.

"X"	Basis	Description
<input type="checkbox"/>	Lump Sum	The lump sum shall be equal to the maximum amount payable. The lump sum includes all direct and indirect costs and profit. The Engineer shall be paid pro rata based on the percentage of work completed. For payment the Engineer is not required to provide evidence of actual hours worked, travel, overhead rates or other evidence of cost.
<input type="checkbox"/>	Unit Cost	The unit cost(s) for each type of unit and number of units are shown in the FCP. The unit cost includes all direct and indirect costs and profit. The Engineer shall be paid based on the type and number of units fully completed and the respective unit cost. For payment, the Engineer is not required to provide evidence of actual hours worked, travel, overhead rates or any other cost data. The FCP may include special items, such as equipment which are not included in the unit costs. Documentation of these special costs may be required. The maximum amount payable equals the total of all units times their respective unit cost plus any special direct items shown.
<input type="checkbox"/>	Specified Rate Basis	The specified rates for each type of labor are shown in the FCP below. The FCP may include special items, such as equipment which are not included in the specified rates. Payment shall be based on the actual hours worked multiplied by the specified rate for each type of labor plus other agreed to special direct cost items. The specified rate includes direct labor and indirect cost and profit. The State may request documentation of reimbursable direct costs including hours worked. Documentation of special item costs may be required. The specified rate is not subject to audit.
<input type="checkbox"/>	Cost Plus Fixed Fee	Payment shall be based on direct and indirect costs incurred plus a pro rata share of the fixed fee based on the ratio of labor and overhead cost incurred to total estimated labor and overhead cost in the FCP or the percentage of work completed. The invoice must itemize labor rates, hours worked, other direct costs and indirect costs. The Engineer may be required to provide documentation of hours worked and any eligible direct costs claimed. The provisional overhead rate charged is subject to audit and adjustment to actual rates incurred. The FCP below shows the hourly rates for labor, other direct expenses including but not limited to travel and allowable materials, provisional overhead rate and the fixed fee. ___A. Actual Cost Plus Fixed Fee - Actual wages are paid (no minimum, no maximum. This option does not apply to Indefinite Deliverable Contracts.) ___B. Range of Cost Plus Fixed Fee - Actual wages must be within the allowable range shown on the Final Cost Proposal.

Payment Type Differences



Specified Rate and Cost Plus Fixed Fee	Lump Sum
Payment based on actual hours worked	Payment based on actual hours produced
Close monitoring of project progress	Progress monitoring necessary to avoid problems and surprises
Review and approval of deliverables	Payment based on completed deliverables

Time to Negotiate – Negotiation Video Clip



PEPS Rate Negotiation Process



Pre-negotiation Meeting

Consultant Initial Offer

PEPS Proposed Rate Evaluation

PEPS/Consultant Rate Counteroffers

Negotiations Termination

Pre-negotiation Meeting



Held to Establish Rules of Engagement in Negotiations

Inform Selected Firm(s) of Method of Payment

Indirect Cost Rate (Overhead Rate)

Staff Classification Limitations

- Only one "Project Manager" (Consultant) for contract
- Title of "Support Manager" may be used for Subproviders only
- Titles of Senior Project Manager and Principal are not acceptable

Consultant Initial Offer



Consultant reviews Rate Negotiation Workbook provided by TxDOT

- Verifies TxDOT- provided Overhead Rates
- Reviews staffing classifications provided by TxDOT (Updates as needed)
- Provides proposed staffing, unit cost, and ODE rates for negotiating purposes

Consultant Submits Proposed Rates on agreed upon date

PEPS Proposed Rate Evaluation



PEPS accepts rate if rate provided is fair and within TxDOT's acceptable negotiation range

Any rate falling outside TxDOT's acceptable negotiation range is countered with rate that PEPS believes is fair and within TxDOT's acceptable negotiation range

PEPS/Consultant Rate Counteroffers



Rate negotiations typically between 2 to 3 rounds (offers and counteroffers)



Both parties countering until agreement can be reached on all staffing classifications, unit costs, and ODEs

Rate Negotiations Termination



- TxDOT does not terminate negotiations based on just labor and ODE labor rates.
- If an impasse is reached, the Procurement Engineer will:
 - Consult with their Service Center Manager
 - Notify the Consultant that the following counter is the best and final offer
 - Inform the District/Division Project Manager that the best and final offer was not accepted and negotiations will be terminated
- If the Consultant or TxDOT walks away, it's a business decision, and it does not impact the consideration of the Consultant on future selections.
- TxDOT's overall objective is to reach a fair and reasonable rate with the most qualified Consultant.

Completing Negotiations



- TxDOT and Consultant reach agreement on all staffing classifications, unit costs, and ODEs
- Procurement Engineer prepares rates (development of Schedule E's) for incorporation into contract documents for contract preparation and execution



An In Depth Look at a Specific Deliverable Contract Negotiation – Level of Effort

Geetha Chandar, P.E.



Level of Effort



- Rate Negotiations
- Scope Negotiations
- Work Schedule Negotiation

Level of Effort (LOE)

- estimated total hours required to complete the project.
- details are not included in the ID contract
- negotiated at the Work Authorization level

Work Schedule

- timeline for the project
- not negotiated for an ID contract since the project is not defined
- negotiated at the Work Authorization level

Level of Effort (continued)



Specific Deliverables

Specific project commitment required

“Project-oriented”

Flexibility in time and budget

- No time limit
- No dollar-value limit

Contract development requires time

- Detailed negotiated scope
- Detailed negotiated budget to establish maximum



Multi-Phase Specific Deliverables

SD contract with less defined scope, schedule, and budget

Scope is developed in phases

- Detailed negotiated scope for first phase of contract
- Draft or minimal scopes for subsequent phases of contract

Maximum not to exceed is based on detailed budget for first phase and estimated budget for subsequent phases



Estimate of total number of hours based on scope of work

Hours relate directly to the scope and work schedule

Hours combine with rates to be the project budget

Negotiated in three phases:

- Planning Phase
- Launch
- LOE Negotiations

Planning Phase : TxDOT Independent Estimate



Developed by District or Division PM based on the project being contracted

For evaluation of reasonableness of Consultant's estimate

Used with PEPS database of similar projects

Estimator should have thorough knowledge of project development process

- Discuss with technically experienced staff
- Contact other districts if necessary

Take advantage of local methodologies

Take necessary time to think it through

Launch Phase : Communication with the Consultant



Procurement Engineer sends project information to prime provider PM

- Negotiated scope
- Work breakdown structure
- Project constraints – time, expectations



May need a scope clarification meeting

Negotiation Phase



- Procurement Engineer (PcE) is point of contact
- PcE receives initial LOE offer from Consultant PM
- TxDOT PM will review Consultant offer using independent LOE
- Target to complete negotiations in max of three rounds
- Face-to-face negotiations are recommended
- Once negotiations are completed, PcE will send acceptance notification to Consultant

Scope Negotiation Meeting



Attended
By

- Consultant PM
- TXDOT PM
- Procurement Engineer
- Subject Matter of Experts
- Other Decision Makers

Agenda
should
include

- Tasks and Deliverables
- Schedules
- Phasing
- Assumptions & Unknowns
- Expectations
- Payment Types
- Issues that may affect LOE
- Consider Site visit



Level of Effort Comparisons



Where estimates are different (high or low)

- Figure out why
- Discuss scope and check assumptions

Scope changes may be required

Don't hesitate to ask questions

Talk to Consultant

Work to resolve differences

Roles and Responsibilities for LOE Negotiations – SD Contract



	Participant		
	Procurement Engineer	District or Division (PM)	Consultant
Planning Phase	<ul style="list-style-type: none"> • Prepare work plan • Compile scope docs • Assemble available project info • Draft negotiation strategy (optional) 	<ul style="list-style-type: none"> • Provide available project info • Create work breakdown structure (WBS) • Prepare a project cost estimate LOE 	N/A
Launch Phase	<ul style="list-style-type: none"> • Send intro & scope, available project info, and WBS to Consultants • Scope clarification meeting 	<ul style="list-style-type: none"> • Scope clarification meeting 	<ul style="list-style-type: none"> • Review scope, project info, and work schedule • Scope clarification meeting

Roles and Responsibilities for LOE Negotiations (continued)



	Participant		
	Procurement Engineer	DD (PM)	Consultant
Initial Rounds (1-3)	<ul style="list-style-type: none"> Prepare and send counter (or send acceptance letter) 	<ul style="list-style-type: none"> Review Consultant submittal/LOE Analyze LOE Redline LOE 	<ul style="list-style-type: none"> Revise scope, WBS & submit to TxDOT PM Develop & submit offer to TxDOT PM
Final Round	<ul style="list-style-type: none"> If accepted, send acceptance email to Consultant If no agreement, refer to PEPS website for terminating negotiations 	<ul style="list-style-type: none"> Review Consultant response 	<ul style="list-style-type: none"> Revise & submit LOE to TxDOT PM

Using the LOE to Calculate Lump Sum



Basis for Developing Maximum NTE

Detailed scope of work with deliverables (be specific)

Negotiated Level of Effort (hours)

Negotiated quantities of other direct expenses

Applicable rates for calculation

Loaded (specified) Contract Rates

Approximate or fixed rate for other direct expenses

Payment Type Differences

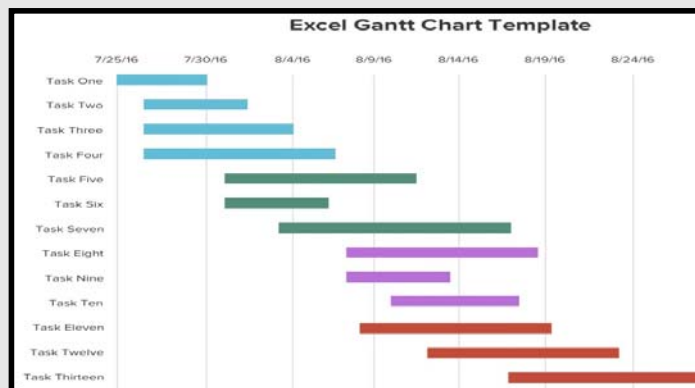


Specified Rate and Cost Plus Fixed Fee	Lump Sum
Payment based on actual hours worked	Payment based on actual hours produced
Close monitoring of project progress	Progress monitoring necessary to avoid problems and surprises
Review and approval of deliverables	Payment based on completed deliverables

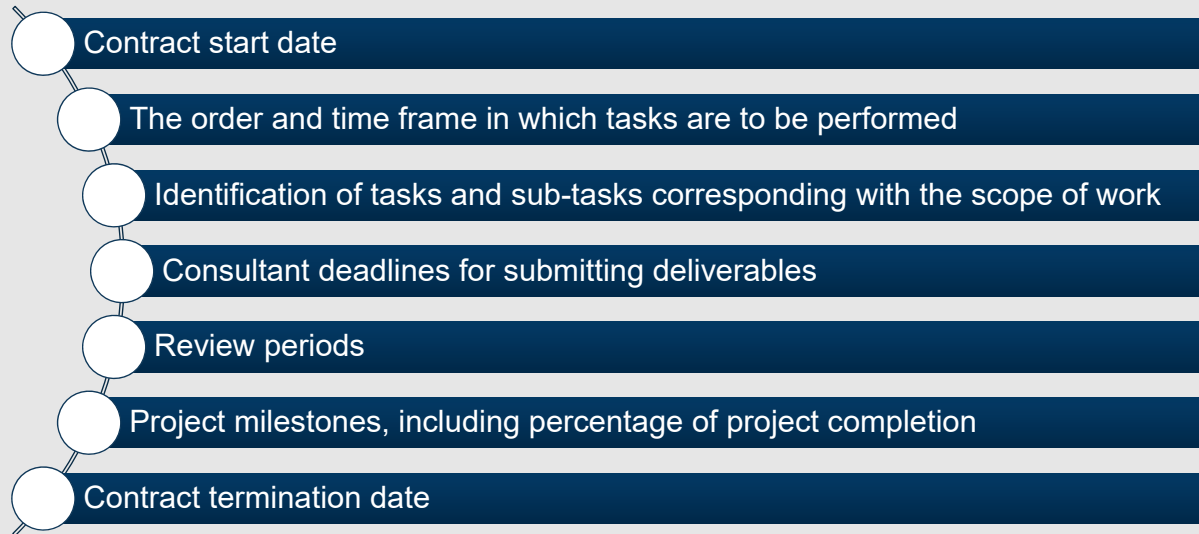
What about the project schedule?



- Should be realistic
- Major milestones
- Review and update
- TxDOT provides key dates
- Consultant develops schedule
- TxDOT has role in critical path
- Gantt chart recommended



Negotiated Work Schedule – Major Milestones



Negotiation Best Practices



Keep process fair and reasonable

Only negotiate for items within expertise – or include SME

Stay within approved limits on scopes, budget, and schedule

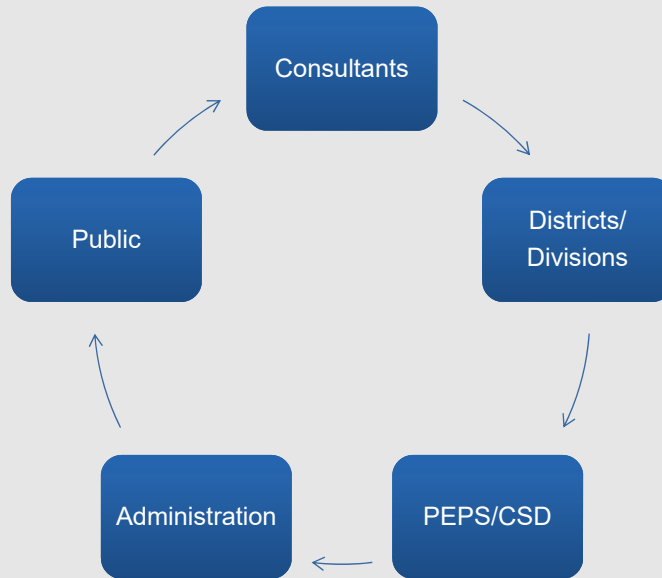
Only negotiate PEPS advertised projects

Do not modify standard contract without CSD approval

Negotiate each contract independently

Document process

Conclusion: Level Of Effort Affects More Than One Entity



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Questions and Discussion




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What are the payment types associated with TxDOT work?

Cost Plus Fixed Fee

- Payment shall be based on:
 - Direct and indirect costs incurred (actual expenses)
 - Plus a pro rata share of fixed fee
- The invoice must itemize labor rates, hours worked, other direct costs, and indirect costs.
- The Engineer may be required to provide documentation of hours worked and any eligible direct costs claimed.
- The provisional overhead rate charged is subject to audit and adjustment to actual rates incurred.
- The final cost proposal (FCP) shows the hourly rates for labor, other direct expenses, including but not limited, to travel and allowable materials, provisional overhead rate, and the fixed fee.

Specified Rate

- The specified rates for each type of labor are shown in Attachment E – the Fee Schedule or FCP.
 - The FCP may include special items, such as equipment which are not included in the specified rates.
- Payment shall be based on:
 - The actual hours worked multiplied by the specified rate for each type of labor, plus
 - Other agreed to special direct cost items.
- The specified rate includes:
 - Direct labor
 - Indirect cost
 - Profit
- The State may request documentation of reimbursable direct costs including hours worked.
- Documentation of special item costs may be required.
- The specified rate is not subject to audit.

Lump Sum

- The lump sum shall be equal to the maximum amount payable.
- The lump sum includes all direct/indirect costs and profit.
- The Engineer shall be paid pro rata based on the percentage of work completed as defined by interim and final deliverables.
- The Engineer is not required to provide evidence of actual hours worked, travel, overhead rates, or other evidence of cost for payment.
- Requires predictable, well-defined scope.
- Knowledge/confidence in level of effort
- Fixed cost (maximum not to exceed) paid for at completion
- Actual hours and cost irrelevant
- Rates are negotiated using Specified Rate
- Maximum not to exceed is calculated when Level of Effort is negotiated

Unit Cost

- The unit cost(s) for each type of unit and number of units are shown in the FCP.
- The maximum amount payable equals the total of all units times their respective unit cost plus any special direct items shown.
- The unit cost includes all direct and indirect costs and profit.
- Payment is based on the type and number of units fully completed, and the respective unit cost.
- Evidence of actual hours worked, travel, overhead rates, or any other cost data is not required.
- Work log or results are required as backup.

What are the major differences between the payment types?

Specified Rate and Cost Plus Fixed Fee	Lump Sum
Payment based on actual hours worked	Payment based on actual hours produced
Close monitoring of project progress	Progress monitoring necessary to avoid problems and surprises
Review and approval of deliverables	Payment based on completed deliverables

	CPFF	SR	UC	LS
Engineering				
Advanced Planning	X	X	X*	
Schematic Design and Environmental	X	X	X*	
PS&E	X	X	X*	
Construction Phase Services		X		
Construction Engineering Inspection		X	X*	
Repetitive Tasks			X	
Surveying		X	X	X
Materials Engineering/Testing		X	X	
Geotechnical Engineering/Services		X	X	
Bridge Inspection		X	X	
Architecture		X		X

* Unit Cost for: Survey and Geotechnical

Negotiation Rules of Engagement

Goal for Negotiations

- For TxDOT and most qualified Consultant to reach fair and reasonable cost for services to be provided

Basic Courtesies

- Negotiations to be conducted with parties treating each other with dignity, respect, and basic common courtesies

Points of Contact

- PEPS Procurement Engineer and Consultant Project Manager are sole points of contact for negotiations

Communication Protocol

- Communication limited to points of contact and neither party permitted to communicate with other representatives of party except when approved by sole point of contact for party

Schedule of Negotiations

- Provides basic timeline for meetings, information exchanges, and overall deadlines for completing negotiations and contract execution

Information Transfer

- Expected that bulk of rate and Level of Effort offers transmitted via email - some elements of negotiation process involve discussion by telephone and by in-person meetings - PEPS Procurement Engineer specifies format for information exchange

Conflict Resolution

- Anticipated to be concluded within two to three rounds (offer and counteroffer) - if items not resolved by third round, expectation is both parties will hold in-person meeting or discuss issues by phone to reach resolution

Escalation

- Party can request to escalate issue - PEPS Service Center Manager for TxDOT - individual identified by their Project Manager for Consultant

Termination of Negotiations

- If parties fail to reach fair and reasonable price, either party may terminate negotiations - if TxDOT believes impasse reached, will send impasse letter with opportunity to appeal to PEPS Division Director - if resolution not reached, negotiations terminated

Typical Sequence for Negotiations

- Pre-negotiation meeting to discuss rules of engagement, project, and format for information exchange
- Scope meetings, discuss project, work elements, and assumptions
- Labor Rate, Unit Cost, and Other Direct Expense negotiations - includes discussion on payment types, approved Overhead rate, and profit negotiation
- Level of Effort negotiations
- Conclude negotiations