

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 PEPS Negotiation Center. The Negotiation Center negotiator, Procurement Engineer (PE), and the Prime Provider Project Manager (PPM) are the designated points of contact for the contract. For the sub-provider labor rates, the Negotiation Center 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 PE will 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. Scheduling and leading the pre-negotiation meeting are the responsibilities of the PEPS PE.
- Negotiations - may be held concurrently:
 - Scope negotiations must discuss the project, work elements, and assumptions. Conducting scope negotiations is the responsibility of the PE and the TxDOT PM.
 - Labor rate, unit cost, other direct expense, profit, and escalation negotiations are the responsibility of the Negotiation Center.
 - Level of effort (LOE) negotiations are the responsibility of the PE and the TxDOT PM.
 - Work schedule negotiations are the responsibility of the PE and the TxDOT PM.
- Conclude negotiations - For Indefinite Deliverable (ID) contracts, the negotiations conclude with the labor rates, unit costs, and other direct expense negotiations. For Specific Deliverable (SD) contracts, the negotiations conclude with the scope, 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 Negotiation Center 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 Negotiation Center manager and any personnel from the firm to help resolve the issue. It is anticipated that scope, LOE, and work schedule negotiations will be concluded by the PE, TxDOT PM, and PPM within two to three rounds (offer and counter-offer). If items are not resolved by the third round, the PE will hold an in-person or telephone meeting with the TxDOT PM and PPM to reach a resolution.

Escalation: If necessary, either party may choose to escalate an issue. For TxDOT, the issue will be escalated to the PEPS Negotiation Center Manager during rate negotiations, and to the PEPS Service Center Manager (SCM) during scope, LOE, and work schedule negotiations. For the provider, it is the individual identified by the PPM.

Termination of negotiations: If the parties fail to reach a fair and reasonable agreement, 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 an opportunity to appeal will be sent to the firm and the PEPS Division Director. If the impasse occurs during the scope, LOE, or work schedule negotiations, the SCM will send an impasse letter to the firm and to the PEPS Division Director. If resolution is not reached, then negotiations are terminated.