Professional Services Negotiation Handbook Introductory Course CBT

Welcome

Welcome to FDOT's Professional Services Negotiation Handbook Training - Introductory Course.

This CBT contains audio and interactive elements, so please adjust your speakers accordingly.

An alternate version is available on the resources page.

To begin, select the start button or press Shift + N on your keyboard.

Introduction

This training is broken out into 6 lessons.

They are:

Lesson 1 – Prepare – Determine your purpose and define your team

Lesson 2 – Create Value

Lesson 3 – Distribute Value

Lesson 4 – Follow Up

Lesson 5 - Negotiation Handbook Training - Application of Negotiation Handbook

Lesson 6 - Cost Analysis

Introduction

Negotiations take place every day in almost every aspect of our lives.

We negotiate with our spouses over the color of the new couch, with our children over how many brussels sprouts they will agree to eat, or with a colleague over where to have lunch.

The list goes on and on, and in most cases, we never think about the process of negotiation.

The purpose of this training is to encourage preparation for negotiations beforehand, with the goal of producing agreements that can increase the benefit to all parties involved.

Introduction

Although Negotiations is not a rigid process,
for training purposes, we will be looking at four steps
that may serve as guidelines for productive negotiations:

Prepare

Create Value

Distribute Value

Follow-up

The following lessons will break down these steps
and introduce several concepts and terms
that are utilized in Negotiations.

Lesson 1: Prepare

Lesson 1 - Prepare

Although many negotiations are similar, none are identical.

Every negotiation deserves preparation,
no matter how similar to the one before.

The preparation step should be done by each party involved
and should occur before any negotiating actually takes place.

Determine Your Purpose

Determine Your Purpose and Define Your Team.

The preparation step IS NOT asking yourself,
what do I hope to get out of this negotiation?

We will address this later.

Preparation does involve answering the question:
What is my role in the negotiation,
and who will assist me in the process?

Define Your Team

When the role or authority of team members is unclear or unknown,
it is possible that negotiations can become stagnant or unsuccessful.

As a team or individual representing one side of a negotiation,
each member must understand:

Who will gather what information?

Who will participate in the negotiations?

Who has the authority in the negotiations?

Who Will Gather What Information?

Who will gather what information?

Depending on your organization’s structure,
it is possible that various individuals or offices will have access
to necessary information needed during negotiations.

For example, if you are a Consultant, your Human Resources office
may need to compile the salary information,
while the work effort estimate may need to be established
by the Project Manager or Senior Engineer.

Who Will Participate in the Negotiations?

Who will participate in the negotiations?

Not everyone involved with the team’s research
will have an active role during the negotiation.

To avoid confusion and frustration for all parties,
establish who will need to attend the negotiation,
and who may simply need to be available
as a resource for questions.

Who Has the Authority in the Negotiation?

Who has the authority in the negotiation?

At the onset, establish who will have the final decision
in each area of the negotiation.

This will reduce the chance of having to table an issue
or need to revisit topics.

When the authority is clear,
participants are more comfortable with the final product.

Estimate Your BATNA and Theirs

Estimate Your BATNA and Theirs.

What is Your BATNA?

BATNA is your Best Alternative To a Negotiated Agreement.

Your BATNA is the best you can do without coming to an agreement.

In other words, your BATNA is not what you prefer to accept,
but is the option available if you do not accept any offer.

Estimate Your BATNA and Theirs

In any negotiation, it is important to protect yourself.

Saying yes for the sake of closing the deal
is not a sound business decision.

You must recognize that sometimes it just isn't in your best interest
to complete the negotiated agreement.

Agree to disagree.

Estimate Your BATNA and Theirs

Your BATNA should be what you would prefer to do
if an agreement cannot be reached.

Remember, working to estimate your BATNA is not a negative thing.

Estimate Your BATNA and Theirs

Many times, parties leave a negotiation unsatisfied
because they failed to establish their BATNA prior to negotiating.

As a negotiator, it is crucial you know your BATNA
to ensure a "mutual gain negotiation" can take place.

If you have a legitimate BATNA, and the offer on the table
is not better, accept your BATNA and walk away.

Note: Often the negotiator does not have the authority
to establish the BATNA and walk away.

In this case it is very important
the roles and authority of the negotiators
are outlined in the first step of your preparation

Estimate Your BATNA and Theirs

When estimating the BATNA of your counterpart it is important
that you put yourself in their shoes and think objectively.

Many times, when this type of "role reversal" takes place,
objectivity is not present.

You must try to put yourself in their shoes.

It is realized that you will not be able to accurately estimate
their BATNA because you do not have
all the necessary information at your disposal.

However, you should be able to make a reasonable guess.

Try to Improve Your BATNA

Try to Improve Your BATNA.

Take a long look at your BATNA.

Remember, your BATNA is your Best Alternative
To a Negotiated Agreement; it is not what you prefer to accept
but is the option available if you do not accept an offer.

Try to Improve Your BATNA

You may decide to call a meeting to review, receive comments,
or brainstorm ways to improve your BATNA.

Consider the following:

If we don't sign this agreement, will we be better off financially?

How long will it take us to come to an agreement?

Is my BATNA based on the facts?

Remember in most cases there is a time value to Money.

Define your Interests

Define your Interests.

Defining your interests is really quite simple
yet overlooked in many negotiations.

Take time to evaluate and define your party's interest
in the agreement.

When you have well-defined interests, you can negotiate
based on your interests alone, and not on opinion or position.

A common misconception is that price and profitability
are the only interests for both parties,
and therefore price and profitability receive all the attention and focus
during negotiations.

Ask yourself if there are other items of importance to the negotiation
such as quality, schedule, relationship, or public perception.

The interest list could be quite extensive.

Try to Estimate Their Interests

Try to Estimate their Interests.

In all negotiations, it is in your interest
to know the other parties' interests.

In fact, it is also in your interest
for the other party to know YOUR interests.

Take time to estimate
what the other parties' interests are in this negotiation.

Remember, there are usually many more interests
other than price and profitability.

Prepare Options That Could Benefit Both Parties

Prepare Options That Could Benefit Both Parties.

Often in negotiations there are options that are never considered,
leaving missed opportunities for all parties.

Try to "get outside the box" and think of options
that may not have been considered yet.

The time you spend on this
will depend on your commitment to creating options.

Lesson 2: Create Value

Lesson 2: Create Value

Creating value involves interactions
between the parties that are in negotiation.

It is very important that special attention is paid to this step,
and a concerted effort is made toward creating value.

Brainstorming

To encourage open discussion and to protect all parties,
it is recommended this step be reserved as a "brainstorming session"
that is separate from a negotiating session.

Brainstorming

Since, in the transportation industry, parties are accustomed to meeting solely for the purpose of negotiating or reaching an agreement, it is suggested that an independent session be established specifically for brainstorming, or “creating value.”

Whether this is done as an independent session, designating “Creating Value” as a separate function from "deciding on an agreement" will be useful in any negotiation.

“Everyday” Negotiations

Whether it is realized or not, individuals often create value in many “everyday” negotiations.

For example, when shopping for a vehicle you might say:

"I like the style of this compact car,
but I really need a vehicle that will accommodate seven passengers.”

Or

"Yes, the 2020’s are very sharp,
but are there rebates on the 2019’s?”

Negotiation Guidelines

Open discussion may also be an opportune time to establish guidelines for your negotiation and to ensure that each party understands and is in agreement.

Important guidelines should include:

Ensuring criticism is avoided;

Establishing a time frame for the negotiation;

Setting an agenda (what you hope to accomplish and when); and

Establishing the course of action when an impasse is reached (For example, Table the issue? Seek mediation? Etc.).

Talk About the Interests of Both Parties

Talk About the Interests of Both Parties

Don’t be afraid to express your interests;
it is necessary in achieving your desires.

In Negotiations, ALWAYS reveal your interests,
but NEVER reveal your BATNA.

An item that is of high interest for one party may be insignificant
to the other party, therefore, it could possibly be obtained
by the interested party during the negotiation.

Come Up with Suggestions

Come Up with Suggestions Without Committing to the Product.

During a "brainstorming session,"
all parties should have the freedom to say "What if we..."

This statement may open doors and avenues to the negotiation
that have not yet been considered.

Try Proposing Several Ideas

You may try proposing several ideas at once.

This will imply you are open to options.

The brainstorming session is for the purpose
of creating new ideas about your agreement
without having to commit to these new ideas.

Be Creative!

Make the Pie Larger

Make the Pie Larger.

Although the concept of making the pie larger is simple,
it is a concept that is often overlooked.

The objective is to come up with ideas that could benefit both parties
prior to discussing costs and details of services.

ZOPA

The “pie” could also be referred to as
the **Zone of Possible Agreement**, or ZOPA.

The ZOPA is the area that is better than either party’s BATNA
while being within the practical restraints of reality.

Often parties will settle for something just a little better
than their BATNA without entertaining the idea
of getting something much more.

ZOPA

Let's imagine that a small-town recreation department is in need of outsourcing the management and facilitation of the concession stand at their local Little League baseball field.

The department would like someone to keep the stand open throughout the summer and provide quality service and products to the public.

It would also like to receive a certain portion of the proceeds to improve the park facility, take care of other needs (such as hiring someone to work at the park entrances to ensure no contraband is brought into the park), and to collect admission fees.

ZOPA

The department advertised the contract in a manner that would allow maximum flexibility and has selected Fan-Cession, Inc., a company it believes possesses the experience to provide good services.

As the parties prepare to negotiate the agreement, Fan-Cession recognizes some of the other needs of the park and offers to also provide gate personnel if a fair price can be reached.

After this is offered, the recreation department notes that there is also a need for maintenance during and after "high traffic" events and it would like to entertain the possibility that Fan-Cession will provide these services as well.

ZOPA

In this example, both Fan-Cession, Inc., and the recreation department created ways to make the pie larger for both parties.

By agreeing to entertain these ideas, more services were discovered, and thus more money will become available.

Lesson 3: Distribute Value

Lesson 3: Distribute Value

Build Trust, Discuss Criteria for Dividing the Pie,
Suggest Possible Distributions

Now that we have established the options and possibilities of the agreement and have created value for both parties, we can look at ways to distribute the value or “divide the pie”.

Build Trust

Build Trust - A crucial component in any relationship is trust.

By building trust, we establish a basis on which we can now distribute value.

An excellent way to do this is to simply be forthright and share your interests.

It is okay to reveal your interests, but you never want to expose your BATNA.

Discuss Criteria for Dividing the Pie

Discuss Criteria for Dividing the Pie -
When discussing how the pie will be divided, it is important to stress the desire to create joint gain.

Often in negotiations, both parties leave too much of the pie on the table.

During the Creating Value discussion, the pie was referred to as the Zone of Possible Agreement, or ZOPA.

If parties have objectively contributed toward broadening the ZOPA, there will be items available that will benefit each party without putting an undue burden on the other.

Discuss Criteria for Dividing the Pie

Again, consider the example of the city recreation department and the concession vendor.

What if the possibility of a long-term contract were available?

Would Fan-Cession be more likely to take a lower price in exchange for the possibility of providing continued services?

This is another example of broadening the ZOPA and dividing the pie in a manner that could be beneficial for both parties.

Discuss Criteria for Dividing the Pie

While discussing how the pie will be divided,
it is important to establish ground rules:

THE RECREATION DEPARTMENT might say:

“First, I would like to discuss what needs to be accomplished, getting a concession vendor in place, and then I will be happy to entertain other options that will benefit both parties.”

FAN-CESSION, INC. might say:

“I think that is a great idea.
Since the length of this contract will have an impact on our personnel, let’s discuss the time frame next.”

Discuss Criteria for Dividing the Pie

In discussing the ZOPA,
we now have an agenda to follow as we negotiate.

It is important to note, however, that the objective of “mutual gain negotiations” is to look at the agreement as a whole and recognize that one item may affect others.

For this reason, it is important to develop solutions for issues while still leaving them open for discussion.

Suggest Possible Distributions

Suggest Possible Distributions - Everyone prefers choices; this is why car manufacturers make various colors and models.

When negotiating an agreement, establish different choices or methods to distribute the value and make them available for discussion.

Suggest Possible Distributions

As someone representing your organization,
try to establish at least three possible options:

Option 1: One that would be beneficial to you while fair to your counterpart.

Option 2: One that would accomplish what you would like but would ‘throw a bone’ to the other party.

Option 3: One that is better than both your BANTA and theirs
(perhaps a last option).

Once each party has prepared these options,
consider ways they can be combined to reach a consensus
and move forward with an agreement.

Lesson 4: Follow Up

Lesson 4: Follow Up

Make Sure Commitments Can Be Easily Reached.

Now that an agreement has been reached,
it is truly in the best interest of all parties to ensure it is a success.

To do so, each party should strive to ensure the commitments
and goals of the agreement are met in full and on schedule.

It is not enough to create solutions that are good only on paper,
everyone must work to achieve the purpose of the agreement.

Establish Periodic Reviews of the Agreement

Establish Periodic Reviews of the Agreement.

The best planning and forethought
does not always guarantee success.

Even the best negotiated and crafted agreements
can run into difficulties along the way.

To reduce the chance of unexpected failures,
periodic reviews of your agreement should be scheduled
to ensure everything is going as planned.

Establish Periodic Reviews of the Agreement

Create a list of questions that should be reviewed periodically:

Is everything on schedule?

How are we doing on our commitments?

Does the budget look okay?

These are just a few questions
that can be asked by both parties of any agreement.

Prepare a list of questions that should be asked about the agreement
and set a reasonable schedule to review these items.

Improve the Relationships

Improve the Relationships.

It’s a simple fact; better relationships equal better outcomes.

Think about a basketball team.

To be successful, the team must have a good on-court relationship with one another.

If one team member is always taking the ball and refusing to pass, or another team member will not set a pick to allow his teammate to get an open shot, the team will not be successful.

Improve the Relationships

If you want your current agreement to be successful and if you have hopes of pursuing other successful agreements, you must work on the relationships of all parties.

What are some common terms to describe successful relationships?

Realistic, Honest, Creative, Resilient, Balanced

If both parties strive to attain these relationship goals, the agreements they craft together will benefit and improve over time.

Lesson 5: The FDOT Negotiation Handbook

Lesson 5: The FDOT Negotiation Handbook

To assist Department staff and Consultant partners with negotiations of professional services Consultant contracts, the Florida Department of Transportation, Procurement Office, maintains a Negotiation Handbook.

In this lesson we will review the Handbook for the purpose of improving your understanding of FDOT Consultant contract negotiations.

FDOT Negotiation Handbook

Florida law requires state agencies to acquire Professional Services by competitive negotiation.

The process mandated by Florida Statutes (287.055, 337.107, and 337.1075), Florida Administrative Code (Rule 14-75), and FDOT procedure (No. 375-030-002,

Acquisition of Professional Services)
requires a competitive selection of the Consultants
based on qualifications, followed by a competitive negotiation process
to establish a fee for the desired services.

Links to these resources are available on the resources page.

FDOT Negotiation Handbook

The objective of the total Consultant acquisition process
is the selection of a well-qualified firm at a fee that is fair, competitive,
and reasonable to both the state agency and the Consultant.

FDOT Negotiation Handbook

Negotiations should be conducted in good faith,
recognizing compromise may be required
to achieve an equitable contract.

The Department's negotiators must recognize
the legitimate interests of the Consultant industry
in recovering their costs and making a reasonable profit
when performing work for the Department.

Conversely, the Consultants must recognize
the legitimate interests of the Department
in receiving quality work at a fair, competitive, and reasonable cost
to accomplish the work program
while maximizing the use of taxpayers' dollars.

A contract that is beneficial to both parties
is the desired outcome of a successful negotiation.

FDOT Negotiation Handbook

The negotiation portion of the Consultant acquisition process
consists of establishing an agreement between the Department
and the Consultant on the following major points:

1. Scope of services to be performed
2. Work effort required (both quantity and level of personnel required)
3. Cost of services
    a. Wage rates
    b. Overhead costs
    c. Direct expenses and Subconsultant costs

d. Facilities Capital Cost of Money, or FCCM

e. Operating margin

f. Contract duration adjustment factor, or CDAF

4. Method of compensation

Although the various components are described separately, the negotiation process should be approached from a holistic perspective since scope, work effort, and cost are interrelated.

It is important that the process be followed in order to ensure Fair and Equitable negotiations.

Fee Proposals

Fee Proposals

Statutes specifically require the Department to conduct a detailed analysis of costs for contracts acquired under the Consultants Competitive Negotiations Act (F.S. 287.055).

The fee proposal must provide sufficient information to allow this.

It is the obligation of the Professional Services Office to review the proposal and bring any errors, omissions, or deficiencies to the attention of the Consultant immediately.

It should also be understood that the acceptance of the documentation does not guarantee agreement to the proposed fee.

Calculating the Fee Paid to Consultants

The fee paid to a Consultant Firm is paid using the standard contract cost elements.

Overhead is an audited rate and is defined as follows:

The Department reimburses a Consultant's indirect costs of contract operations using an overhead rate or combined overhead rate.

The "combined" rate is a total of the "Fringe Benefit" costs and the "General Overhead" costs in relation to the direct labor base.

Fringe benefits are non-salary costs associated with employees and employment taxes and are always treated as indirect costs by the Department.

General overhead includes all other indirect costs,
including indirect labor.

Direct Expense Percentage

Direct Expense percentage is an audited rate
and is defined as follows:

All professional services contracts negotiated since October 1, 2003
have included reimbursement of direct expenses
by application of a direct expense rate based on the audit listing
of direct costs in relation to the direct labor base.

The direct expense rate shall be applied to the direct salary costs.

Operating Margin

Operating margin is intended to compensate the Consultant
for those normal business expenses which are excluded
from the allowable overhead by Federal Regulation
(e.g., interest, advertising, bad debt, unrecovered direct costs, etc.)
as well as provide the Consultant with a reasonable profit.

The range is 12% - 42%, applied to the direct salary costs.

Four major criteria are considered
when determining operating margin: complexity of project,
risk, schedule, and cost control efforts.

Contract Duration Adjustment Factor

Contract Duration Adjustment Factor, or CDAF

For contracts 25 months or greater, the Department shall allow
a CDAF, which is defined as an economic price adjustment, necessitated by instability
of labor costs for an extended period
of contract performance (Reference 48 CFR Section 16.203).

CDAF is not negotiated but shall be a fixed number of points
based on the overall anticipated length of contract
or project schedule.

CDAF Points applied to direct labor
based on the anticipated length of the contract.

Contracts less than 25 months receive no CDAF.

For additional details, please refer to the Negotiations Handbook,
available on the resources page.

Facilities Capital Cost of Money Rate

The Facilities Capital Cost of Money, or FCCM, rate is an audited rate and reimburses the cost of maintaining the facilities necessary to perform professional services for the Department, instead of investing the capitol in other opportunities.

There is a single FCCM rate for the firm, based on total direct labor (home + Field).

FCCM is determined from the "Average net book value" of the Consultant's capital assets and rates covering six-month periods established and published by the U.S. Office of Management and Budget.

FCCM rates are applied to the direct salary costs.

Calculating the Fee

The fee calculation for a contract is as follows:
Total Fee = DL + [(OH + OM + CDAF + DE + FCCM) x DL]

Where Direct Labor, or DL, is the raw unburdened labor;

Overhead, or OH, equals the Audited Overhead Percentage;

Operating Margin, or OM, equals the Operating Margin Percentage;

Contract Duration Adjustment Factor, or CDAF, equals the CDAF Percentage; and

Facilities Capital Cost of Money, or FCCM, equals the FCCM Percentage.

Fee Proposals

Fee Proposals

To achieve uniformity in cost proposals, the Department has established the Automated Fee Proposal, or AFP.

The AFP allows the Consultant to provide the Department the necessary information for negotiations in a standard format that can easily be updated and maintained for the purpose of future audits.

The AFP combined with minimal supporting documentation provides sufficient information to support the cost of the Professional Services Agreement.

Fee Proposals

AFP Information, training, manuals, and updates to the AFP may be downloaded from the Department's Procurement Office website.

A link is available on the resources page.

Scope of Services

Scope of Services

The scope of services is one of the major factors affecting the fee for Consultant services since it defines the nature and volume of work to be performed.

A well written scope of services establishes the tasks to be performed, materials to be delivered, meetings to be attended, schedule to be met, equipment that will be used, standards to be followed, and responsibilities of both the Consultant and the Department.

The scope of services should be carefully reviewed and agreed upon to assure a mutual understanding of the project and create value for both parties.

Scope of Services

The following are typical major items within the scope of services requiring negotiations:

Work activities;

Deliverables;

Numbers of and types of meetings, presentations, etc. to be attended or provided;

Schedule for project services; and

Division of responsibilities and relationship between Consultant and Department.

Work Effort

Work Effort

The objective of this process is to ensure the proposed staff hours are reasonable for the specific project.

It is also critical to determine if a reasonable distribution of work among various levels of staff is proposed to ensure the most economical staffing commensurate with the complexity of the project.

Work Effort

Upon receipt by the Department of the Consultant's staff hour estimate, the Department's estimate shall be provided to the Consultant.

The Consultant's staff hour estimate should be compared with the Department's and the differences evaluated.

Discussions will be conducted with the Consultant to resolve differences between the Department and the Consultant staff hour estimate.

As with the entire negotiations process, a record should be kept of the key points discussed and resulting resolution.

Work Effort

Some items related to work effort include, but are not limited to:

Staff hours, overtime, survey, etc.;

Levels of personnel required;

Distribution of work among levels of personnel;

Subconsultants (quantity of work effort, personnel, etc.);

Delineation of work to be provided by Consultant, the Department, or others.

Cost of Services

Cost of Services

There are many items included in the cost of services, some are negotiable while others are fixed in nature due to Federal Audit guidelines.

Some items needed to be taken into consideration for cost of services are:

Wage rates;

Overhead percentage;

Direct expense percentage; and

Subconsultant costs.

Facilities Capital Cost of Money, or FCCM

Operating margin

Contract duration adjustment factor, or CDAF

Cost of Services

To assist with the negotiation of these items, the Department collects data of all proposed and negotiated wage rates for standard job classifications, as well as average audited Overhead, Direct Expense, and FCCM.

Average wage rates are published on the Department's Procurement website and updated nightly.

Average audited Overhead, Direct Expense, and FCCM rates are updated annually and are available in the Negotiations Handbook.

Operating Margin

The operating margin paid in a Consultant contract does NOT represent net profit to the Consultant.

Consultants have normal business expenses that are excluded from allowable overhead by Federal Regulations (e.g., interest, advertising, bad debts, unrecovered direct costs, etc.).

These legitimate costs cannot be recovered on FDOT contracts except through operating margin.

Operating margin compensates the Consultants with a reasonable fee.

Operating Margin

Operating margin in Department contracts is calculated as a percentage of direct salaries.

The percentage is negotiated within a range of 12% to 42 %.

The resulting dollar amount is the "fixed fee" portion of a cost plus fixed fee type contract or becomes part of the total fixed price in a lump sum agreement or part of the fully loaded billing rate.

Operating Margin

Operating Margin is negotiated based on the criteria of:

Complexity of the project;

Degree of financial risk assumed by the Consultant;

project schedule; and

Consultant cost controls

demonstrated by the Consultants proposed staffing, overhead, direct expense rate, and salary rates compared to industry averages.

Operating Margin Guidelines

Operating Margin is negotiated based on the following criteria:

Project Complexity

Degree of Risk

Project Schedule

and Cost Control Efforts

The ranges are to be used as a guide in negotiating the operating margin for each contract.

Please select each criteria to learn more.

Project Complexity

Project Complexity (5% to 7%) - The degree of difficulty and level of coordination associated with the project.

Low complexity are those projects which are straight forward with well-defined scopes.

Typical projects include 3 R projects.

Medium complexity projects are those with some specialized work to be performed, an example project includes Rail Roads.

Typical High complexity projects are multi-disciplined projects requiring specialized skills with significant management issues.

An example project includes bridge scour.

To see additional Typical Project Types and Suggested Standards please reference the Negotiation Handbook or the Operating Margin Justification form available on the resources page.

Degree of Risk

Degree of Risk (3% to 5%) - The amount of financial risk
assumed by the Consultant in relation to the project.

Low Risk Projects are those with well-defined and specific scopes,
minimal probability of cost overruns and low financial risk exposure
such as Bridge Inspection, CEI support, Survey and Geotechnical.

A Medium risk project has potential for additional coordination efforts
with outside agencies/parties; coordination with several Districts,
multiple municipalities, etc.

Included are Bridge Scour, Project Development & Environmental,
or PD&E, and Railroads.

Typical High-risk projects such as those that are lump sum
consultant contracts with possibility of overrunning costs;
experimental design; projects involving significant financial risk,
hazardous materials, and potential for significant unknown issues.

This would include high visibility, lump sum CEI contracts,
and Large multimodal Projects.

To see additional Typical Project Types and Suggested Standards
please reference the Negotiation Handbook
or the Operating Margin Justification form
available on the resources page.

Project Schedule

Project Schedule (1% to 3%) - The degree to which critical deadlines
and the public profile of the project need to be considered.

Projects assigned with low or 1% include projects includes projects with no critical
short-term deadlines
or requirements for large staffing concentrations,
unfunded projects to go on the shelf.

This includes Bridge Inspection, Planning, and 3R survey.

Projects assigned with a medium or 2% include Standard Schedules
typical with CEI for ITS and Push Button construction and traffic counts.

Projects assigned with high or 3% include High visibility projects with short durations
and aggressive schedules requiring large commitment of staff.

Fast track projects with high profile
and quick implementation schedule; such as Design
for mobility/economic stimulus, and PD&E for design phase
funded in the Work Program and bridge replacements.

To see additional Typical Project Types and Suggested Standards
please reference the Negotiation Handbook
or the Operating Margin Justification form
available on the resources page.

Cost Control Efforts

Cost Control Efforts (3% to 27%) -
The degree to which the Consultant controls its costs for wage rates (by region), overhead, expenses and FCCM.

The cost control is not generally dependent upon the type of project.

Factors to be considered in negotiating this criteria are the following, and other project-specific items:

Burdened salary rates (by region) by classification;

Reasonableness of the proposed distribution of staffing for the project, services requiring specialized staff; and

Reimbursed or excluded premium overtime.

LOW – (3% to 6%) Lower or minimal cost control efforts.

MEDIUM – (7% to 15%) Moderate cost control efforts.

HIGH – (16% to 27%) Substantial cost control efforts.

Operating Margin Guidelines

The Operating Margin Guidelines are only a guide, not a fixed formula, for negotiating operating margin.

There is a large variation in operating margins with the range to account for the wide spectrum of cost control by various Consultants that conduct business with the Department.

There will be significant variation in operating margin from contract to contract.

Negotiators SHALL NOT use a standard operating margin for all contracts.

Operating Margin Guidelines

Since Cost Control Efforts account for such a broad portion of the Operating Margin Percentage, additional guidelines have been given for evaluating cost control efforts.

Again, fixed formulas should not be used to calculate the percentage to be applied.

Operating Margin Guidelines

Factors to be considered in negotiating
the cost control efforts percentage shall include:

Burdened salary rates by classification
(including overhead, expense percentage, and FCCM only)

Specific services requiring specialized staff

Reasonableness of proposed distribution of staff for the project

Burdened salaries by geographic region

For CEI contracts, if the firm has overhead
or direct expense percentages that include premium overtime
(reimbursed) or firms where the premium overtime
is reimbursed directly on the contract (excluded)

And other items specific to the contract being negotiated.

Operating Margin Guidelines

It is possible for negotiators to negotiate operating margins
outside of the range for special circumstances on a contract.

For example, if overhead rates, direct expense rates, or salaries
are significantly above (or below) the normal range,
operating margins below (or above) the ranges may be negotiated.

Other factors that impact the cost/benefit to the Department
and/or Consultant may also be considered.

Contract Duration Adjustment Factor

For contracts of over 24 months duration, the Department
shall allow a Contract Duration Adjustment Factor, or CDAF.

CDAF is defined as an economic price adjustment,
necessitated by instability of labor costs
for an extended period of contract performance
(Refer to 48 CFR Section 16.203).

CDAF is not negotiated but shall be a fixed number of points
based on the overall anticipated length
of contract or project schedule.

CDAF Points applied to direct labor
based on the anticipated length of the contract.

Contracts less than 25 months receive no CDAF.

Contracts 25 to 36 months receive 3 CDAF points.

Contracts 37 to 48 months receive 4 and a half CDAF points.

And contract 49 months and greater receive 5 and a half points.

Other Important Negotiation Guidelines

Other Important Negotiation Guidelines

Department's Policy Statement on Use of Field Office Rates
for On-Premises Consultant Employee

The Department will reimburse the cost of rent,
and utilities for field offices as a direct project cost.

Field office rent, and utilities should be excluded from the Consultant's direct expense multiplier.

Other Important Negotiation Guidelines

Reimbursed field office costs: Field office rent, utilities, set-up,
and mobilization costs only.

Utility costs may include electricity, water, natural gas, sewer,
internet connection such as non-mobile DSL or cable lines,
trash pickup, and hook-up fees associated with the utilities,
NOT phone service, NOT phone equipment.

Other Important Negotiation Guidelines

Department's Policy on Field Office Expense Reimbursement
for CEI and Right of Way Acquisition Contracts

Field office set-up and mobilization charges
involved with transporting the trailer to the job site
may also be reimbursed.

Charges for furniture, supplies, and equipment, including fax, copier,
computer, and phone equipment are included
in the direct expense percentage and are not compensated
as an itemized expense directly on the contract.

Method of compensation

Negotiation of the Method of Compensation is often overlooked
due to the emphasis on individual costs

Discussions should be conducted with the selected Consultant
regarding the Method of Compensation.

To some extent, the selection of whether the compensation element
is to be lump sum or cost plus is a negotiable item.

Under Departmental procedures, lump sum compensation elements
may be used where the scope of services is well defined,
and the level of effort can be reasonably predicted.

In addition, consideration must be given to requirements
imposed by the Florida Highway Association, or FHWA,
for federally funded projects.

Method of Compensation

The following standard methods of compensation may be used:

Lump Sum

Cost Reimbursement

Cost Per Unit of Work

Specific Rates of Compensation

Please select each method to learn more.

Lump Sum

A firm fixed price not subject to adjustment
due to the actual cost experience of the Consultant
in the performance of the contract.

This places the maximum risk on the Consultant
and provides motivation for efficient cost management
to maximize profits.

It also minimizes the Department's time in contract administration.

It is the recommended Method of Compensation
when the scope of services is well-defined,
and the level of effort can be reasonably predicted.

Federal Aid Policy Guidelines prohibit the use of Lump Sum contracts
for CEI work unless the "extent, scope, complexity, character,
and duration of the work" have been established.

The use of Lump Sum contracts for CEI work
must be approved by the Chief Engineer.

Cost Reimbursement

The Consultant is reimbursed the actual costs incurred in the performance of the contract.

A “maximum limiting amount” is normally established to cap the amount the Department will pay for the services.

This method is used when the services are so vague or complex that the level of effort or expenditure cannot be estimated with reasonable accuracy.

This provides minimal incentive to the Consultant to control costs and is time consuming to administer.

Cost Reimbursement

For non-federally funded contracts, the Department has the option of reimbursing on the basis of “cost plus percentage of cost” for maximum limiting amount contracts.

Cost plus percentage of cost is defined as the use of a fixed percentage operating margin, applied to the direct salary costs.

Cost Per Unit of Work

A negotiated unit rate for a repetitive task or deliverable product is established and paid for each unit produced.

The unit rate is not subject to adjustment.

A maximum limiting amount is normally established based on the estimated number of units required.

This method is frequently used for geotechnical services, lab tests, soil explorations, traffic counts, bridge inspections, etc.

Specific Rates of Compensation

Fully loaded rates are established for unit of time, usually per hour.

These rates are inclusive of raw rate, overhead, direct expense percent, FCCM, operating margin, and CDAF.

Documentation of Negotiations

Documentation of Negotiations

During the entire negotiation process, a summary
or taped record of the resolution of all decisions
between the Consultant and the Department will be kept
and will be filed with the official agreement records in the PSU.

Final negotiations will reconcile any variances in work effort
from that previously negotiated and establish the compensation
to be paid to the Consultant for the services to be rendered.

The results of all negotiations with the Consultant
must be documented in writing
and made a part of the permanent project file.

Termination of Negotiations

Termination of Negotiations

Should the Department be unable
to resolve differences in the considered data
or negotiate a fair and reasonable fee for the services,
as determined by the Department,
the Department will terminate negotiations with the Consultant
and provide written notice of termination to the Consultant.

The Department will then initiate negotiations with the Consultant
previously ranked second by the Department's Selection Committee.

The decision to terminate negotiations
is a business decision the Department makes
and it should not cause the Consultant to be viewed negatively
or in any way impact their opportunity for future selections.

Contract Amendments

Contract Amendments may be used to increase or decrease
total contract fees, where warranted by scope changes.

When this occurs, a negotiation process very similar
to that involved with the original agreement is required.

The Department prepares a scope of 19 services
and an independent staff hour estimate.

A staff hour estimate and fee proposal
is requested from the Consultant, and negotiations are conducted
to establish a fair and competitive fee.

For most supplemental amendments, the wage rates, and multipliers
have been established in the original agreement.

Therefore, negotiations are usually limited
to establishing staff hour quantities and direct expenses.

Guidelines for the negotiation of original agreements
should be applied to supplemental agreements.

Contract Amendments

Rate Adjustments to Professional Services Consultant Contracts

Wage rate adjustments are appropriate for the following scenarios
on Consultant contracts:

Pulling plans off the shelf to revisit and revise
or take to completion/plans update amendment
(Rate adjustments are only applicable to contract services
beyond the fifth year).

Changing from design to post design (Rate adjustments
are only applicable to contract services beyond the fifth year).

Contract Amendments

Time extensions that extend contracts beyond the fifth year
(Five years is the typical service term
of a professional services contract.
Rate adjustments are only applicable to contract services
beyond the fifth year).

Additional services added to a contract (Rate adjustments
are only applicable to contract services beyond the fifth year).

Contract Amendments

If it is known that the contract time will extend beyond five years,
the contract services projected beyond the fifth year
are eligible for rate adjustment.

The Consultant firm would be allowed to submit
new certified rate information as of the timeframe
when the contract supplemental (or future time extension) is drafted,
to update wage rates for the services projected beyond the fifth year.

Contract multipliers may also be adjusted
for the aforementioned services beyond the fifth year, including
overhead rate, Facilities Capital Cost of Money, or FCCM,
direct expense rate, and operating margin.

The contract multipliers would reflect the audit package information available at the time the contract supplemental (or future time extension) is drafted.

Contract Amendments

When new staff are added on a contract to perform different services due to phase changes within the same contract (from Project Development & Environmental Studies to Design), it is appropriate for the Consultant firm to utilize current wage rate information for Consultant staff performing services under the new phase.

Task Work Orders

For task assignment type contracts, the original agreement typically establishes unit wage rates.

As each work assignment is developed, a fee for that assignment is negotiated.

Therefore, procedures identical to those for supplemental amendments are followed for task work orders.

Work Stoppages

Work Stoppages

In the event a project is stopped or suspended by the Department, a reasonable period should be allowed for the Consultant to close out the project.

Costs associated with such a close out should be negotiated with the Consultant when warranted.

Information Resource

An Information Resource

The Negotiation Handbook contains a considerable amount of information to assist both FDOT and Consultant staff with contract negotiations.

Summary

The Negotiation Handbook is a reference tool
established and maintained for the purpose of providing assistance
to Department staff and Consultant partners
in reaching an agreement on professional service contracts.

It may be downloaded for your use
from the Procurement Office website.

A link is available on the resources page.

Lesson 6: Cost Analysis

Lesson 6 – Cost Analysis

Requirements for Cost Analysis for Professional Services Contracts:
A Determination of Loaded Rate

A cost analysis is required by law

Requirements Concerning Costs

Requirements Concerning Costs

Authority concerning costs in negotiations
for professional services contracts is given by the following:

Title 23 CFR Part 172, Title 23 U.S.C. 112,
and Title 40 U.S.C. Chapter 11 – “fair and reasonable”

2 CFR Part 200 – “must perform a cost or price analysis”

Section 287.055, F.S. – “fair, competitive, and reasonable” and
“conduct a detailed analysis of the cost”

Purpose of Cost Analysis

Purpose of cost analysis

Because selection on a Professional Services contract
is based on qualifications, not price, and Federal Code of Regulations
and State Law require a determination that costs are “fair, competitive
and reasonable.”

Rule Chapter 14-75, Florida Administrative Code

“A Professional Consultant who desires to qualify
with the Department shall submit a Request for Qualification Package
for Professional Consultants, Form 375-030-01.”

A link to the complete Rule is available on the resources page.

What is involved with a Cost Analysis?

What is involved with a Cost Analysis?

Cost Analysis consists of a review of the following contract cost elements – supported by appropriate documents:

Please Note: FDOT does not use a Company's "billing" rate.

Staff hours negotiated by the Project Manager, or PM

Resumes supporting the proper categorization of job classification in accordance with the Negotiation Handbook

Raw Hourly rates with verification performed by Professional Service Unit, or PSU, using payroll registers

Please Note, in some cases payroll registers may not be available for sole proprietors or LLCs.

Negotiated Operating Margin

Multiplier (also known as the loaded rate)

What is involved with a Cost Analysis?

Sole Proprietors or LLCs may have other options.

Raw hourly rates verification using other than payroll registers

Please note, these options are an effort to determine a salary for the individual in order to calculate a "fair, reasonable, and competitive" hourly rate.

To mimic salary, the draws should be consistent in amount and periodically paid.

These rates may be capped.

A formal Agreement with the Company that states a dollar amount for periodic draws (supported by current posting to General Ledger)

Tracking work hours (not just billable hours) provided with this Agreement

Some other proof of consistent and periodic draws that represent salary along with total hours

A recent paystub/pay statement from a previous employer

These options are an effort to determine a salary for the individual in order to calculate a "fair, reasonable, and competitive" hourly rate.

To mimic salary, the draws should be consistent in amount and periodically paid.

Conclusion

You have completed FDOT's Professional Services Negotiation Handbook Training-Introductory Course.

Thank you for your time and attention.