

CHAPTER 4 – NEGOTIATED CONTRACTS

4.0 Introduction

The two types of negotiated contracts normally used by DOTD are lump sum compensation and cost plus fixed fee with a maximum compensation limitation. There are many similarities between the two, as shown below:

- A. Pre-award audits may be required for both types (see Section 2.3 Audits for more details)
- B. Proposal format is identical
- C. Negotiation procedures are similar
- D. Profit/fixed fee calculation is similar
- E. Calculation procedure for the total estimated cost is identical

Negotiated cost plus fixed fee with a maximum compensation limitation contracts vary from negotiated lump sum compensation contracts in that:

- A. Post audits are required for negotiated cost plus fixed fee with a maximum compensation limitation contracts
- B. Contingencies may be added in the compensation computation for negotiated cost plus fixed fee with a maximum compensation limitation contracts
- C. The amount paid for the negotiated cost plus fixed fee with a maximum compensation limitation contract is the actual documented cost (subject to DOTD maximum limitations on salary and overhead rates), up to the negotiated maximum contract limitation while the amount paid for the negotiated lump sum compensation contract is the entire lump sum compensation, based on:
 - a. Work-hours
 - b. Salary and overhead rates
 - c. Direct expenses

A post audit is required to determine the actual cost (subject to DOTD maximum limitations on salary and overhead rates). Fixed fee and maximum compensation limitation amounts are not adjusted because of the post audit, (i.e.

these amounts are not changed as a result of differences between the actual values, and those used to determine compensation for the contract).

DOTD maintains a database that is used to define work efforts and costs for future projects. A post audit may be performed on a lump sum compensation contract for the purpose of adding to this database. Lump sum compensation is not adjusted because of the post audit results.

4.1 Initial Meeting

Within fifteen days after the award, the DOTD Project Manager will schedule a meeting with the selected Consultant, the Consultant Contract Services Unit, and appropriate DOTD personnel. The purpose of this meeting is to transfer data and material from DOTD to the Consultant and discuss the scope of the project. A guideline will be given to the Consultant, consisting of a list of references and miscellaneous information relative to invoicing and project milestones. The Consultant will be required to read these guidelines and return a signed copy to the Project Manager.

The Consultant should initiate contact with the DOTD's Audit Section as soon as possible after receipt of the Notice of Award if the Department has not previously established an overhead rate. Failure to do so may delay the negotiation process.

4.2 Scope of Services Proposal

A scope of services proposal will be solicited at the initial meeting by the Project Manager. The proposal must not include work-hours or proposed compensation. DOTD and any other affected parties will review the scope and reconcile differences with the Consultant.

The proposal will be typed on 8½"X11" papers, with the pages numbered consecutively, and contain the following:

- A. A transmittal letter, signed by the Principal of the Prime firm
- B. A proposal index (optional)
- C. A detailed narrative describing the scope of services
- D. A list of line items which include:
 - 1. A description of the work to be performed, to which work-hours will be distributed at a later date, with each line item specifically and logically tied to the narrative. The personnel or salary classification shall be shown for each line item. The line item scope is developed for the purpose of estimating work efforts. However, the narrative scope will become the "Scope of Services" for the contract.

2. The proposed work divided into logical parts with the magnitude and number that facilitate the future estimation of work-hours. Caution should be exercised to make certain that work does not overlap between line items.

4.3 Compensation Proposal

After an agreement is reached on the scope of services, an independent work-hour estimate will be prepared by the Project Manager and other appropriate DOTD personnel (when warranted) and submitted to the Consultant Contract Services Unit. The Project Manager will then request in writing from the Consultant to submit a price proposal directly to the Consultant Contracts Services Unit. **The Consultant is cautioned not to submit the price proposal until the Project Manager requests it, as the FHWA requires DOTD to develop an independent estimate prior to receiving an estimate prepared by the Consultant.**

The proposal will be typed on 8½"X11" papers, with pages numbered consecutively, and contain the following:

- A. A transmittal letter, signed by a Principal of the Prime firm, showing a summary of the proposed compensation
- B. A proposal index (optional)
- C. Previously agreed to scope of services
- D. Previously agreed to list of line items, with each item showing the estimated work-hours required for each appropriate salary classification
- E. A separate sheet of calculations, showing the:
 1. Total work-hours for each salary class multiplied by the appropriate salaries
 2. Sum of the amounts for each salary class (direct salary costs)
 3. Overhead percentage and amount
 4. Profit/fixed fee (see Section 2.6 for more details)
 5. Estimated direct expenses
 6. Contingencies (Cost Plus Fixed Fee with a Maximum Compensation Limitation Contracts, see Section 2.7 for more details)
 7. Maximum limitation (Sum of Items 2, 3, 4, 5, and 6)

Items E1 through E7 are shown separately for each Phase and Part, and for each discipline such as Road Design or Bridge Design. When there are to be Sub-consultants, items E1 through E7 are shown separately for each Sub-consultant. A separate summary sheet for the Firm/Team is required. This sheet

shows the individual and total for lump sum(s), or fixed fee(s) and maximum limitation(s).

- F. A sheet showing the profit calculation
- G. A description of the method used to determine the salary rates in all salary classes, including those personnel to be used in each class, their salaries, and the computed averages in all classes (weighting is permissible)

4.4 Negotiation Procedure

The Consultant's proposal(s) are distributed to all reviewers and other interested parties by the Consultant Contract Services Unit. The Project Manager is responsible for integrating the input from all reviewers. The Consultant Contract Services Unit is responsible for:

- A. Comparing DOTD's estimate with the Consultant's by comparing the direct salary costs of the Department's work-hours to the Consultant's work-hours. Direct salary costs are computed using the total work-hours by salary class multiplied by the Consultant's salary rate for each class and summing the amounts.
- B. If negotiations are successful, a final compensation package is prepared that includes:
 - 1. The Consultant's compensation proposal
 - 2. Audit report (optional)
 - 3. The comparison of the Consultant's and the Department's work-hours
 - 4. Other miscellaneous information

The final compensation package is then:

- A. Submitted for approval to the Chief Engineer, and, if required, to the FHWA
- B. If approved, the final compensation package is the basis for the preparation of the contract

In general, DOTD's theory of negotiation is that the work effort (work-hours) is negotiated. The final compensation will be the lesser of the Consultant's proposed final compensation or the final compensation calculated by the Consultant Contract Services Unit. The final compensation calculated by the Consultant Contract Services Unit is derived using the Consultant's work-hours, the latest salary rate information subject to maximums, the smaller of the proposed overhead rate (by the Consultant) and the current contract overhead rate, profit, direct expenses subject to maximums, and contingencies. A "step-by-step" description of the negotiation process follows:

- A. The scope of services proposal is reviewed and any differences reconciled. It may be necessary to revise the proposal, depending on the extent of the changes required.
- B. The Project Manager and all other reviewers estimate the work effort required to accomplish the scope of services agreed upon.
- C. DOTD's direct salary cost estimate is calculated as:
 - 1. Compute the overall total of all DOTD work-hours in the various salary classes.
 - 2. The work-hours are then multiplied by the Consultant's proposed salary rates. This yields the estimated direct salary costs for each salary class.
 - 3. The total direct salary costs are then calculated.
- D. DOTD's estimated direct salary costs are compared to the Consultant's direct salary costs. Phases, Parts, disciplines, and Sub-consultants may partition a proposal. The total direct salary costs for the DOTD and the Consultant are compared. Such costs include everything contained in the proposal. If the difference is within DOTD's allowed tolerance, and if agreement is reached on direct expenses, the negotiations are concluded and the Consultant's work-hours are accepted.
- E. If the difference is not within the allowed tolerance, the Consultant Contract Services Unit will advise the Project Manager or other reviewers on the Consultant's of areas of disagreement and will recommend a negotiation plan.
- F. A second independent review of work-hours may be requested by the Consultant Contract Services Administrator for contracts and supplements with the proposed price of \$250,000-\$500,000, or when warranted for multi-disciplinary projects. A second independent review of work-hours will be required for all contracts and supplements with the proposed price of larger than \$500,000.
- G. Ensuing evaluations and discussions may result in the submittal of a revised proposal from the Consultant. If the Consultant annotates the proposal to reflect suggested revisions, it is so noted.
- H. The above steps are repeated until DOTD's and the Consultant's estimate of direct salary costs is within the allowed tolerance. At this point, the Consultant's work-hours estimates are accepted.
- I. Once the negotiations are completed, the Consultant will submit a final compensation proposal. The Consultant Contracts Services Unit will compute the final compensation and file the Consultant's proposal along with the independent work-hour estimate (revised if necessary); an audit

report (optional); the comparison of the Consultant's and the Department's direct salary costs; and any other pertinent information.

- J. If, after several unsuccessful efforts to reach agreement within 10 days, the Consultant Contract Services Administrator's opinion is that further negotiations would be ineffective, a final offer will be made to the selected Consultant. This offer will consist of DOTD's estimated compensation based on DOTD's estimated work effort, and the Consultant's audited rates, subject to DOTD maximums. If the Consultant accepts, the Project Manager will finalize and transmit the final compensation package. If the Consultant declines the final offer, the Consultant Contract Services Administrator will make a written recommendation for termination of negotiations. Then a new Consultant will be chosen from the project short list, and negotiations will begin with the new Consultant.

4.5 Contract Amendments for Negotiated Type Contracts

Contract amendments for negotiated type contracts are also negotiated. The compensation calculation for extra work letters, supplemental agreements, and Task Orders issued under a retainer contract is the same as for the original contract. For further information about negotiated type contracts, supplemental agreements and extra work letters, see Section 2.4 "Standard Contract Phases and Parts", Section 2.8 "Contract Amendments", and Section 2.8.1 "Proposal Format For Contract Amendments".