



**Florida Department of
Transportation**

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To pre-qualified consultants:

On October 1, 2003 the Department will implement significant changes in our negotiations practices. These changes have been developed over the last four years through joint efforts of Department and Consultant staff. These efforts produced a negotiations training program derived from the "Mutual Gains" approach to negotiations as taught at the Program on Negotiations in Cambridge, Massachusetts. The essence of this approach, which is based on the negotiations principles originally set forth in the book "Getting to Yes", is to identify the primary interests of all parties to the negotiation, and endeavor to satisfy all of your own interests first and as many of the interests of the other parties as possible through a mutual problem solving effort.

The Department recognizes the legitimate interest 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 interest 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. The intent of the changes is to allow all parties to the contract negotiations to work together to resolve differences and meet their interests. These changes will be mandatory for all new contracts that have a final selection date on or after October 1, 2003. They will not be applied to supplemental amendments or Task Work Orders negotiated for existing contracts. The changes are summarized below.

Automated Fee Proposal

Proposed costs for new contracts are required to be submitted in the Automated Fee Proposal Spreadsheet (Excel format), available for download from the Department's Procurement Office website, under the Forms link.

<https://www.fdot.gov/procurement/formmenu.shtm>. Proposed staffing for task assignment type contracts must also be submitted using the Automated Fee Proposal (AFP). Guidelines for use of the AFP are also available on the Procurement website.

Overhead

The Department's caps on overhead and FCCM rates will be eliminated on new contracts. The Department will continue to require annual submission of overhead audits as part of the consultant qualification process and will publish average home and field office overhead rate information and average FCCM rates in the Negotiations Handbook, which is also

available on the Department's Procurement Office web site under Publications: <https://www.fdot.gov/procurement/pubsmenu.shtm>. This data may be used to determine the overall fairness and competitiveness of the total proposed contract cost. The Department will not negotiate overhead rates. The approved audited rate will be used to determine contract costs, unless the consultant voluntarily proposes a lower rate to stay within contract budgetary constraints. The Department may not require a consultant to use a lower overhead rate as a condition of contracting. Overhead caps will continue to be imposed on existing contracts (contracts with a final selection date prior to 10/1/2003), until the contract term is completed. Biennially calculated limits for overhead, CADD, and FCCM rates will also be published in the Negotiations Handbook.

Salaries

The Department will compile average salary data from the Automated Fee Proposal and the Consultant Invoice Transmittal System by position title. This data will also be published in the Negotiations Handbook available on the Internet. This data may be compared to proposed salary costs to help determine competitiveness. If the contract is being negotiated as a cost plus a fixed fee contract and the intent is to reimburse actual salaries, caps by position classification may not be imposed, i.e. the Department will not pay actual salaries up to a cap. Contract rates may still be negotiated for a position classification. When unusually high salaries are proposed, the negotiators should determine the value of the proposed staff for the successful completion of the project. If there is not a legitimate need for the level of expertise provided, the Consultant may agree to accept a reduced wage rate. It is vital that salary and other cost data proposed by consultants be current and accurate as required by law. The Department may require current payroll registers to verify the accuracy of the proposed wage rates.

Expenses

Direct expenses will be based on the Consultant's audited direct expense rate. The audited rate will encompass all direct expenses, including those such as CADD, which were previously treated under separate direct rates. Exceptions may be considered for extraordinary items not included in the audited rate if the cost of a single item is in excess of \$10,000. To ensure consistent application of the types of exceptions allowed, the district negotiator should contact the Contract Audit section in the Office of the Inspector General or the central Procurement Office to discuss the costs prior to negotiating an expense amount separate from the audited direct expense rate. An audited direct expense rate is a requirement in all Overhead Audits for fiscal years ending December 31, 2002 and later. If your firm does not have an audited expense rate, you must provide one as soon as possible. Average direct expense rates will be published in the Negotiations Handbook. Vehicle expense guidelines will continue to be published in the Negotiations Handbook for use on existing contracts.

Operating Margin

Operating margin not only provides a profit, but also compensates the consultant for otherwise unrecoverable costs. As part of the effort to encourage and reward cost control efforts by the consultant, the manner in which operating margin is negotiated is also changing. Instead of negotiating within a range of 10 % to 15 % of salary and overhead costs, the percentage will be negotiated within a range of 12 % to 42 % of direct labor costs only.

The basis for negotiating the operating margin percentage will be the complexity of the project, the degree of cost risk or liability involved, the project schedule, and cost control efforts demonstrated by the consultant's proposed staffing, overhead, direct expense, and salary rates compared to industry averages. The following table illustrates how these factors should be weighted and considered.

Operating Margin % Calculation Table for Direct Salaries		
Criteria	% Range	Suggested Standards
Complexity of Project (20%)	3% - 8%	Low - simple straight forward projects such as resurfacing or restoration High - complex multi-disciplined projects requiring specialized skills with significant management issues – multiple subs etc.
Degree of Risk (20%)	3% - 8%	Low – cost plus fixed fee contract with little chance of cost overruns and low liability exposure High – lump sum contracts with possibility of overrunning costs - projects involving significant liability, hazardous materials, experimental designs, etc.
Schedule for Project (10%)	1% - 5%	Low – no critical short term deadlines or requirements for large staffing concentrations High – High visibility projects with short duration and aggressive schedules requiring large commitment of staff
Cost Control Efforts (50%)	5% - 21%	Low – staff hours higher than DOT estimate and all other cost factors (wage rates, overhead and expense %) higher than average High – hours and cost factors lower than average
Total	12% - 42%	

This is intended only as a guideline – not a fixed formula. If the new method of negotiating operating margin is to achieve its desired affect of rewarding firms for assuming risk and

controlling costs, there will need to be significant variance in the operating margin percentage negotiated from contract to contract. Negotiators cannot fall back on a standard operating margin percentage for all contracts.

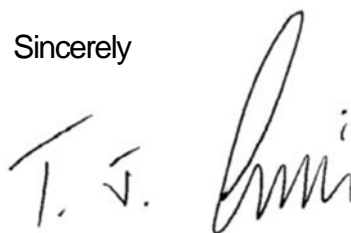
Alternatives

One of the key principles in the Mutual Gains approach is to identify and evaluate alternatives to a negotiated agreement, and to not accept an agreement worse than the alternative. This principle tracks with the approach to negotiations under the Consultants' Competitive Negotiations Act, (287.055, F. S.), which requires the agency to terminate negotiations with the consultant when a fair competitive and reasonable price cannot be achieved.

Mutual Gains and CCNA clearly indicate the need for the Department to work with the consultant to arrive at a fair, competitive and reasonable cost, but, failing that, be prepared to terminate negotiations and begin negotiations with the number two ranked firm. 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. The changes in negotiations are intended to facilitate the negotiations process.

If you have questions concerning the new negotiations process, you may contact me via email at terry.cappellini@dot.state.fl.us

Sincerely

A handwritten signature in black ink, appearing to read "T. J. Cappellini". The signature is written in a cursive style with a large, looped "C" at the end.

Terry J. Cappellini, Manager
Procurement Office