



By Terry J. Cappellini, Florida Department of Transportation

In the Fall of 2003, hundreds of engineering consulting firms received a letter from the Florida Department of Transportation (FDOT) announcing significant changes in negotiations practices. Although the changes became effective October 1, 2003, work toward the new practices began years before. As early as 1998, representatives of the consulting community and FDOT met to address issues and concerns surrounding the contract negotiation process.

Those efforts produced a training program derived from the "mutual gains" approach to negotiations as taught at the Program on Negotiations in Cambridge, Massachusetts.

For more than two years now, FDOT's eight districts and hundreds of engineering consulting firms have used the mutual gains process in contract negotiations for some 500 to 600 contracts each year. Although there is the potential for conflict any time two parties discuss financial issues, the mutual gains negotiations process appears to be working well in Florida.

FIRST STEPS TOWARD CHANGE

FDOT relies more on consulting engineering firms than most of its

counterparts in the country. The department does very little in-house design and engineering. For many years the FDOT has selected the best-qualified firms for services and negotiated individual contracts for projects.

In 1998, a liaison committee made up of representatives of the consulting industry and FDOT management set up a partnership effort to focus on contract issues. As a result of the committee's meetings, two people were selected to learn how to train others in the mutual gains approach. FDOT offered a training program for consultants and FDOT members in 1999 and 2000.

FDOT selected the term "mutual gains negotiations" to reflect the goal of contractual dialog: fair and reasonable agreements for consulting firms that also ensure the best use of taxpayers' dollars. FDOT and the consultants have a shared responsibility to create a quality transportation system in the state—and they will realize shared benefits from establishing long-term relationships.

HOW MUTUAL GAINS NEGOTIATIONS WORK

The mutual gains approach to contract negotiations is not new. The approach is

based on the principles of negotiations set forth in the book *Getting to Yes*, written by Roger Fisher and William Ury in the 1980s.

The approach is based on five principles:

Interests – know what is important:

Both parties identify their interests and anticipate the interests of the other. Interests of the consulting firm could include the opportunity to branch into a new area or maintain staff levels or increase profitability. Interests of FDOT could include maintaining a desired schedule for a project or keeping costs at a targeted level.

Interests differ from positions. A position is concrete and fixed and viewed narrowly, while an interest is the larger reason for the position and is viewed as a wider, more flexible concept. For example, a consulting firm's position may be that a certain number of staff hours are generated by a project; but the big picture is that they want to maintain their staffing levels and workload. That's their interest.

Both parties must know their interests and negotiate for them, understanding that there may be many positions that can satisfy those interests.

Options – be creative: Both parties explore all options to achieve everyone's interests. Negotiators find areas of agreement and disagreement. They brainstorm options to find solutions to areas of disagreement.

Criteria – be prepared: FDOT has amassed extensive databases on benchmarks to help define boundaries in the negotiations process. The department has data on salary ranges, anticipated cost-of-living increases, direct expenses, overheads, staff hour estimating, and other financial data. Such information helps negotiators come to a consensus based on fact, rather than being divided by conflicting opinions.

Alternatives – protect interests: Each side should determine what its best alternative to the negotiated agreement (BATNA) will be. If the two parties cannot come to an agreement that is better than that alternative, negotiations come to an end as an order of business, not as a personal failure. Neither consulting firms nor FDOT should be

forced into poor business deals as a result of negotiations.

Relationship – work together: FDOT and consulting firms both benefit from establishing long-term relationships. One of the goals of mutual gains negotiation is to maintain long-term relationships even if negotiations end in one party declining to accept the contract. Relationships are built on honest and straightforward communication. It takes professional skill to negotiate for interests while maintaining good relationships.

FUNDAMENTAL CHANGES

Four major changes accompanied implementation of mutual gains negotiations. In the past, FDOT set an upper limit for allowable overhead expenses for consulting firms, averaging the reported overhead rates of about 300 consulting firms over a three-year period to arrive at a cap of 168% of direct salaries. Similarly, FDOT capped the rate it would pay for facilities capital cost of money (FCCM) and CADD.

In some contracts, FDOT also reimbursed actual salaries up to a cap. If construction project inspectors usually received \$17 an hour, that was the maximum FDOT would allow for those services.

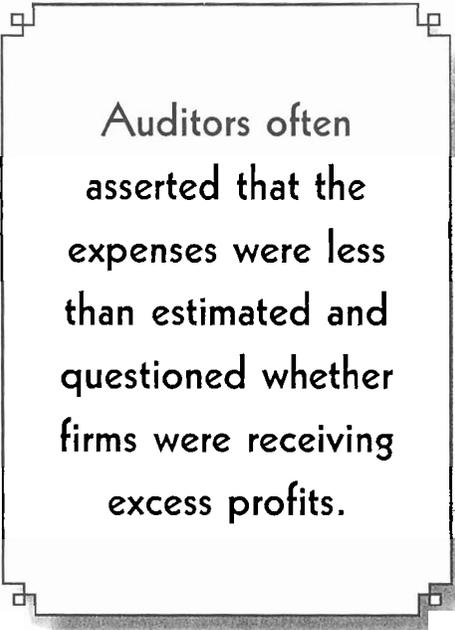
Under the new procedure, all caps are gone. FDOT now accepts audited overhead and FCCM rates and does not pay actual salaries up to a cap.

Two other changes relate to operating margins and reimbursement of direct expenses. FDOT used to negotiate operating margin as a 10% to 15% additive applied to salary and overhead combined. The percentage now is applied only to direct salaries and at a much wider range—12% to 42%. The philosophy is that payment as a percentage of salary and overhead rewards firms with a higher overhead rate. Applying the formula only to salaries encourages firms to reduce high overhead. The final change resulted in a streamlined system unique to FDOT.

State requirements for documenting direct expenses resulted in a hardship for consulting firms. If FDOT agreed to reimburse firms for direct expenses, the firms had to document each item, resulting in stacks of receipts. The department streamlined the process by

estimating anticipated direct expenses as part of the contracting process and paying a negotiated lump sum. However, auditors often asserted that the expenses were less than estimated and questioned whether firms were receiving excess profits.

Since 2003, FDOT relies on consulting firms' cost audits to calculate direct expenses as a percentage of direct salaries and uses that percentage to compensate direct expenses in the next year's contracts.



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The new method has virtually eliminated the time-consuming process of estimating and negotiating project expenses, which only account for about 10% of contract costs.

A FAVORABLE RECEPTION

FDOT has been monitoring the mutual gains negotiations process for the last 3 years and believes it has been well-received. Each of the eight FDOT Districts manages its own contract negotiations. As with any skill, some negotiators are more adept than others, and the department has offered assistance where needed. The general reaction to the process is that FDOT has a better understanding of actual costs, and consulting firms are being compensated fairly.

The mutual gains negotiations process appears to be helping FDOT and consulting firms arrive at contracts that are agreeable to both parties, through an efficient process of negotiation that helps to establish and maintain long-term relationships.

THE FUTURE

The liaison committee continues to meet quarterly to assess the mutual gains negotiations process and its application. Committee members analyze project data and seek comments from participants in the process. Although no major revisions of the system are planned, the committee is open to suggestions for ways to make the process work even better for FDOT and consulting firms. ■

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