

# CONTRACT NEGOTIATIONS

How to Get the Service You  
Need at a Fair Price and  
Protect Your Interests

Vernon James Research Center, Plymouth, NC

October 30, 2007

# Elements of a Valid Contract

- Parties have legal capacity to contract
- Subject must be lawful
- Compliance with the statutes
- "Real" Agreement between the Parties
- Sufficient Consideration

# What is a "Real" Agreement?

- Scope of work is clearly outlined
- Schedule is clear and understood
- Chance for "unknowns" is acknowledged
- Risk of failure is fairly balanced

# Project Scope

As part of your RFP Process, you have developed a scope...now is the time to

- Get a clear understanding on the expected results desired
- Revise the scope, if needed

# Set the Schedule

Also as part of the RFP Process, you have set out a schedule for the project. Now is the time to...

- Make sure everyone understands any time constraints on the project (permitting, funding, working around someone else's schedule)
- Establish and agree to any benchmarks or deliverables – these can be linked to payment schedules.

# Recognize There Are “Unknowns”

It's not possible to know everything going into a contract. So...

IDENTIFY

- Make a note for the contract of any unknowns.

LIST

- Set aside funds, if possible, to address these (contingency)

UNKNOWN

- Agree on methods for payment on any unknowns that result in change orders.

# Balance the Risks of the Project

- Identify known risks where possible
- Do not assume a liability that is under control of the other party
- Be cautious of contract provisions that limit liability for the other party.
- Agree on how to handle situations that may occur.

# Contract Documents

- Use Industry Standard documents as the starting point, then amend as necessary.
- Don't try to reinvent the wheel by developing your own documents.

# Negotiating the Fee

- Have the firm develop the fee based upon the agreed-upon scope
- Focus on the big items –don't worry about pennies
- Remember your constraints (funding)

# Justifying the Fee

- Firm should be able to provide information on fees from similar projects
- You can obtain information from other agencies on similar projects
- The fee must be matched against the particular needs of your project
- There are no "standard % fees"

# Pricing Methods

- "Not to Exceed"
  - "Lump Sum"
  - "Time and Materials"
  - "Percentage of Construction Costs"
  - "Cost Plus (a percentage of cost)"
- 
- Remember your constraints (funding sources)!

# Work on a Contingency Basis

- Engineering professional organizations do not support work on a contingency basis
- Some firms will work on this basis – up to them!
- Difference between free work and work for “money on the come”

# Who Owns the Work Product?

- Do not assume you own the work product just because you pay for it!
- Plans and Specifications, Reports, Permit Applications, maps, etc. come in paper and digital form in today's world
- The contract must specify ownership- joint is preferable
- This is particularly important when contracts are terminated prior to completion of the job.

# Additional Services

- Additional services are those not specified in the contract
- They will typically cost more, and may be billed under a different cost method
- Contract needs to specify when and how these additional services will be covered.

# A "Successful Negotiation"

- Each party is confident their needs will be met.
- Neither party feels that they are at an advantage/disadvantage to the other
- Each party is anxious to get started
- Each party leaves with a smile

# Contract Administration

- Most problems encountered during a contract are due to unanticipated changes/conditions
- Some problems occur due to lack of enforcement of the contract
- A good working relationship is important, but a well-written contract may be all you have to rely upon if there is a disagreement

# Resources:

- UNC School of Government
- National Society of Professional Engineers
- American Public Works Association
- NCRCAP