

CONTRACT NEGOTIATIONS

101

GETTING THE SERVICES YOU
NEED FOR AN APPROPRIATE
PRICE



ELEMENTS OF A VALID CONTRACT

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



REAL AGREEMENT BETWEEN THE PARTIES

- The “meeting of the minds”.
- The scope of services.
- The steps necessary to reaching a “real agreement”.



Steps to reaching a real agreement

- Defining the scope of work.
- Defining the schedule.
- Identifying unknowns.
- Balancing risk.



DEFINING THE SCOPE

- List services/end results desired.
- Discuss each item.
- Clarify each item.
- Revise.
- Agree on the final results.
- Allow for changes.



DEFINING THE SCHEDULE

- Identify needs.
- State and discuss expectations and requirements.
- Set and agree upon goals.
- Allow for changes.



IDENTIFY UNKNOWNNS

- Every circumstance cannot be covered in the original agreement.
- List possible identified unknowns in the agreement.
- Set up allowances to deal with identified unknowns.
- Agree on unit prices or cost method to use for allowances or changes.



BALANCE RISKS

- 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.
- What about bonus or damage clauses?



SUFFICIENT CONSIDERATION (The Fee)

- What are you buying?
 - Experience
 - Expertise
 - Time
 - Product



DEVELOPING THE FEE

(What is “fair and reasonable?”)

- The firm can make a profit.
- The agency can justify and afford it.
- It will stand the “newspaper test”.



NEGOTIATING THE FEE

- Have the firm develop the fee based upon the agreed-upon scope.
- Redefine or clarify areas of scope that appear to be out of line.
- Focus on the big items – don't worry about pennies.
- Have the consultant revise the fee based upon new scope items.
- Sometimes a different approach to a scope will reduce costs for both parties.



JUSTIFYING THE FEE

- Firm should be able to provide information on fees from similar projects.
- 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”.



THE HALLMARKS OF 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 would be willing to undertake another project together immediately.
- Each party is anxious to get started.
- Each party leaves with a smile.



ADMINISTRATION OF THE CONTRACT

- 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 beats a well-written contract any day.



CONSULTANT EVALUATIONS

- Should be used as a tool to improve the next project.
- An evaluation process is like a mirror – you must also look at yourself.
- Be cautious about creating a “public record” that may damage someone in the future.



THE GOOD NEWS

- Engineering firms are seriously interested in having a successful project.
- There are many resources for help:
 - NCRCAP
 - Institute of Government
 - National Society of Professional Engineers
 - APWA
 - Other agencies like you