



# Negotiation Center Updates

## 2022 PEPS Conference

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November 30, 2022



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# Major Accomplishments



## Highlights

- New Policy for the Negotiation of Profit & Escalation was approved on January 27, 2022
- PEPS Contracting: Negotiation Process Manual Posted (June 2022)
- FY 2022: The Negotiations Center (NC) negotiated 84 contracts with 433 consultants that resulted in 661 rate tables
- FY 2023 (to date): NC has negotiated 21 contracts with 187 consultants that resulted in 194 rate tables.
- FY 2022: the NC has processed 70 supplemental agreements.
- FY 2023 (to date): the NC has processed 17 supplemental agreements.
- The NC has negotiated portfolios with over 338 consultant firms.
- Majority of firms have gone through the annual renewal process .
- Random Rate Verifications have been performed

# Annual Rate Negotiation Facts



- All providers negotiate their own rates, both Prime and Sub-providers.
- The rates negotiated will be effective for all contracts awarded to that firm in the twelve months following the completion of the annual rate negotiation
- All negotiations for requested labor classifications, unit costs and ODEs are the responsibility of the Negotiation Center
- Only the labor classifications necessary for the discipline of the awarded contracts are negotiated.
- The firm portfolio will grow with added labor classifications as new contracts are awarded.

# Consultant Firm Experience



Negotiations can be customized for unique contracts and projects

Allows for more informed planning for the consultant

Platform to discuss consultant challenges by individual firms

Consistent application of profit and escalation

Adversarial aspect is diminishing



# Statewide Policy on Profit and Escalation

# Statewide Policy on Profit and Escalation



## MEMO

January 27, 2022

**To:** District Engineers  
Division Directors

**From:** Bill Hale, P.E.,  
Chief Engineer *Bill Hale*

**Subject:** New Policy for Negotiation of Profit and Escalation

Attached is the New Policy for the Negotiation of Profit and Escalation on engineering consultant contracts.

Please review and understand as consultant contracts are being processed and negotiated.

Clear and consistent direction is necessary for streamlining of the negotiation process. This new policy provides the necessary direction to accomplish this.

**CC:** Brian Barth, P.E., Deputy Executive Director  
Lance Simmons, P.E., Director of Engineering and Safety Operations  
Quincy Allen, P.E., Director of District Operations  
Martin Rodin P.E., Director, PEPS Division

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## MEMO

January 10, 2022

**To:** Brian Barth, PE *Brian Barth*  
Deputy Executive Director of Program Delivery 1/11/2022

**Through:** William Hale, PE *William Hale*  
Chief Engineer 1/10/2022

**From:** Martin Rodin, PE *Martin Rodin*  
PEPS Division Director 1/10/2022

**Subject:** New Policy for Negotiation of Profit and Escalation

The department is tasked with delivering an increasing number of projects and relies on engineering consultants to help us deliver these projects. It is important that we work effectively and efficiently with consultant providers to produce high quality results. This includes the streamlining of negotiations.

The department took a significant step in streamlining negotiations with the approval of the Annual Rate Negotiations Process in May 2019, which allowed for negotiating base labor rates with each firm once a year. Rates are now negotiated statewide for contracts annually by the PEPS Negotiations Center.

As a further streamlining of the Negotiations Process, it now makes good sense to establish a statewide policy for the negotiation of Profit and Escalation for each contract.

The statewide policy for the negotiation of Profit shall be as presented below and as updated in the current version of the PEPS Negotiations Manual:

### Statewide Policy for Profit

- Allowable profit shall be negotiated by the PEPS Negotiations Center Manager and shall be assigned to the contract based on multiple risk factors
- The profit rate is a negotiable part of all contracts and varies depending on characteristics of the contract and other basic factors
- Basic factors which may determine the allowable profit assigned for each contract include the project size, complexity, duration, discipline of work and degree of risk
- The TxDOT Project Manager and Prime Provider should provide information about the basic factors associated with the project to the PEPS Negotiations Center Manager
- The PEPS Negotiations Center Manager shall use their professional experience and engineering judgment to determine a fair and reasonable rate for profit

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- A typical range is between 8 and 12 percent. Deviation for special circumstances beyond these limits must be approved by the PEPS Division Director
- PEPS Negotiations Center Manager will consider the profit rate as part of the entire rate schedule negotiations

The statewide policy for the negotiation of Escalation shall be as presented below and as updated in the current version of the PEPS Negotiations Manual:

### Statewide Policy for Escalation

- When entering into long-term Specific Deliverable (SD) and Indefinite Deliverable (ID) contracts, escalation will be negotiated, when deemed appropriate, by the PEPS Negotiation Center Manager
- A long-term contract is defined as any contract that is five years or longer in duration
- The TxDOT Project Manager and Prime Provider should provide information about basic factors associated with the project to the PEPS Negotiations Center Manager
- Escalation will be negotiated and applied to labor rates and unit costs, as deemed appropriate, by the PEPS Negotiation Center Manager
- Escalation is determined using the US Bureau of Labor Statistics Producer Price Index (PPI) for Engineering Services (Transportation Engineering Projects)
- When approved by the PEPS Division Director, other applicable indexes may be used in the determination of the escalation percent of change
- To balance annual fluctuations, a three-year average of the annual PPI will be used. Any escalation above the three-year annual PPI percentage must be justified and documented by the PEPS Negotiations Center Manager and approved by PEPS Division Director
- Escalation will be applied at the beginning of the third year from the date of execution and applied every second year thereafter, unless an exception is granted by the PEPS Division Director
- Escalation may be considered for a contract that does not currently include escalation only with a Supplemental Agreement that includes an extension of time or a change in the scope of services

This statewide policy on Profit and Escalation shall become effective immediately upon receipt of this message. For questions or assistance on this policy, please contact Martin L. Rodin, P.E., PEPS Division Director, at 512-413-4310.

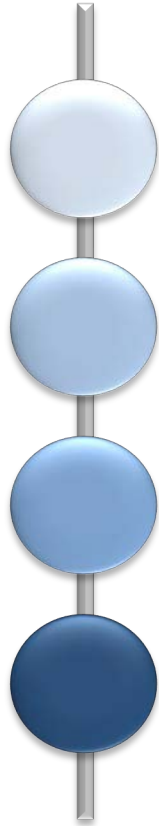
**cc:** Quincy Allen, P.E.  
Director of District Operations

Lance Simmons, P.E.  
Director of Engineering and Safety Operations

Brian Barth, P.E.  
Deputy Executive Director for Program Delivery

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January 10, 2022

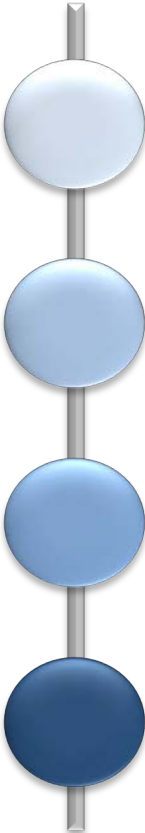


Escalation applies to long-term SD and ID contracts as deemed appropriate by the PEPS Negotiation Center Manager. Long-term is 5 years or longer.

Escalation will be negotiated and applied to labor rates and unit costs as deemed appropriate by the PEPS Negotiation Center Manager

Escalation is determined using the US Bureau of Labor Statistics Producer Price Index (PPI) for Transportation Engineering Projects

When approved by PEPS Division Director, other applicable indexes may be used in the determination of the escalation percentage of change



A 3-year average of the annual PPI will be used. Any escalation above the 3-year annual PPI percentage must be justified and documented by the PEPS Negotiations Center Manager and approved by PEPS Division Director

Escalation will be applied at the beginning of the 3<sup>rd</sup> year from the date of execution and applied every 2<sup>nd</sup> year thereafter, unless an exception is granted by the PEPS Division Director

Escalation may be considered for a contract that does not currently include escalation only with a Supplemental Agreement that includes an extension of time or a change in the scope of services.

The TxDOT Project Manager and Prime Provider should provide information about basic factors associated with the project to the PEPS Negotiations Center Manager



Allowable profit shall be negotiated by the PEPS Negotiation Center and shall be assigned to the contract based on multiple risk factors

Profit is a negotiable part of all contracts and varies depending on characteristics of the contract and other basic factors

Basic factors that may determine the allowable profit assigned for each contract include the project size, complexity, duration, discipline of work and degree of risk

The TxDOT Project Manager and Prime Provider should provide information about the basic factors associated with the project to the PEPS Negotiation Center



PEPS shall use professional experience and engineering judgment to determine a fair and reasonable rate for profit

Typical range is between 8 – 12%. Deviations must be approved by the PEPS Division Director

PEPS Negotiation Center will consider the profit rate as part of the entire rate schedule negotiations

# Dispute Resolution Process



A dispute resolution process will be administered by the Negotiations Center Manager and escalated through PEPS Senior Leadership, when necessary.





# Annual Rate Process



To begin the negotiation process, firms will receive an email from one of the negotiators.

A workbook will be attached that must be completed and returned by the date in the body of the email.





Firms prepare and submit the range of actual wage rates (raw rates) paid to all employees that charge hours to each Labor/ Job Classification.

The Firm will submit a single offer for each Labor/Job Classification needed for the contract.





The PEPS Negotiation Center will review the firms offer as well as the distribution of rates for the Labor/Job Classification.





The consultant's offer is compared to the normalized curves for labor data specific to each Labor/Job Classification.

If the offer is fair and reasonable considering the firm's distribution and falls within the data curve, the offer is accepted.

If the offer is greater than the data curve, a discussion will be scheduled between the PEPS Negotiation Center representative and the firm's negotiator.



The negotiation discussion is conducted through a Microsoft Teams virtual meeting.

Not limited to email exchanges and each firm now negotiates their own rates.





All engineering firms must submit their Overhead Schedules to the Administrative Qualifications (AQ) Group annually.

The AQ Group reviews the Overhead Schedules and determines the firm's Overhead Rate.





For non-engineering firms that are not Administratively Qualified and do not participate in Safe Harbor, the base wage rates will be negotiated the same for each labor classification.

A single multiplier will be negotiated for the firm.

The multiplier will be applied to the negotiated labor classification rates.

No additional percentage of profit is applied to loaded rates.



# Renewal of Annual Rates Process



The renewal of rates will begin with the first awarded contract after the anniversary date for the firm

Example:

- Anniversary date for Emerald City Consultants, LLC (ECC) is March 5, 2022
- Awarded a contract on March 22, 2022
- ECC will need to renegotiate their portfolio.

# Renewal of Annual Rates Process



	A	B	C	D	E	F	G	H	I	J
2		Solicitation #:	601CT00000003000							
3		RFQ/RFP#	90-3RFP5001		Date sent:					
4		Contract #:	90-3SDP5001		Date received:					
5		ID or SD:	SD							
6		Consultant Firm Name:	Emerald City Consultants, LLC							
7		Prime or SUB:	Prime							
8		Consultant Negotiator:								
9		TxDOT Negotiator:	Julie Rook							
10		Discipline:	GEC							
11										
12		<b>Direct Labor</b>		<b>In Current Portfolio</b>	<b>Classification Needed?</b>	<b>Option 1</b>				
13		<b>Labor/Job Classification</b>	<b>Years of Experience</b>	<b>(Yes or No)</b>	<b>(Yes or No)</b>	<b>Use Rate from Previous Portfolio</b>	<b>Rate from Previous Portfolio</b>	<b>Rate 1</b>	<b>Rate 2</b>	<b>Rate 3</b>
14										
15										
16										
17										
18										
19										



The firm will have 2 options for the renegotiation of the portfolio:

## Option 1

Continue with the rates from the previous year's negotiation

## Option 2

Renegotiate the firm's Labor/Job Classifications and Unit Costs

The firm can also use a combination of Option 1 and Option 2.





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