



THE UNIVERSITY OF
NEWCASTLE
AUSTRALIA

Negotiation Framework and Guidelines for Contracting Goods and Services

Negotiation Framework And Guidelines for Contracting and Procurement

Table of Contents:

Introduction.....	3
Objectives of Contract / Procurement Negotiation	4
When to Negotiate?.....	4
Direct Negotiations	5
Who Should Negotiate?	5
What Can Be Negotiated?	5
Methods of Approach to Negotiation.....	6
Emotion.....	6
Logic	6
Threat.....	6
Bargaining	6
Compromise.....	7
Negotiation Cycle.....	7
1. Preparation	7
2. Planning.....	8
3. Opening.....	9
4. Testing.....	9
5. Moving	9
6. Closing.....	10
Results of a Successful Negotiation	10
Summary	11
Appendices:	11
Appendix 1 – Tips for Effective Negotiation	11

Negotiation Framework And Guidelines for Contracting and Procurement

Introduction

Negotiation is the art of applying influence to increase the probability of achieving a desired outcome.

Negotiating in the procurement or contract context is the process of bargaining between two or more parties to reach a mutually acceptable agreement on the final terms, conditions and specifications of what is being contracted or procured.

There are two styles of negotiating and either one should be utilised to reach the most effective outcome.

Interest-based negotiation is a negotiation strategy in which parties collaborate to find a "win-win" solution to their needs and wants. This strategy focuses on developing mutually beneficial agreements based on the interests of the parties. Interests include the needs, desires, concerns, and fears important to each side.

Position-based negotiation. The positional bargaining strategy of defining a position and maintaining it throughout the negotiations with minimal concession is usually pursued for highly strategic needs to the organisation i.e. technical specification etc. For financial negotiations, however, this strategy is inappropriate because of its emphasis on struggle instead of cooperation.

Interest-Based Negotiation is:

- Win-Win
- Outcome based on needs of all parties
- Based on Mutual Interests
- Believing that resources are not necessarily limited (expanding the "pie")
- Future relationships as high priority
- Co-Operation
- Assertiveness
- Joint Problem Solving
- Not just the bottom line
- Objective criteria
- Respect the people
- Bargain hard on interests

Negotiation Framework And Guidelines for Contracting and Procurement

Positional Negotiation is:

- A traditional approach
- Hard Bargaining
- Commit to position early in negotiation
- Win-Lose
- Resources are limited
- My Needs Only
- My Interests Only
- Me against You Competition - you are my opponent
- Little priority on future relationships
- Confrontation
- Defensiveness
- Assertiveness
- Position Based - there is only one solution, mine

Objectives of Contract / Procurement Negotiation

1. Establish a common understanding between the parties
2. Obtain a fair and reasonable price and/or supply terms or improve a current offer
3. Reduce the level of risk and uncertainty
4. Determine any special needs around the good or service is to be delivered
5. Establish a good working relationship between the parties based on mutual respect
6. Resolve problems, variations or unanticipated circumstances arising out of a contract or contractors performance

When to Negotiate?

If after a competitive tendering process none of the tenders are acceptable either due to the level of non-conformance or because they do not represent sufficient value for money, negotiations, parallel negotiations may be conducted with short listed tenderer/s that are acceptable based on evaluation criteria.

The purpose of the negotiations shall be made clear to all participants prior to the commencement of negotiations. The aim is to achieve a mutually acceptable tender.

Negotiation can occur:

- after the selection of a preferred respondent(s)

Negotiation Framework And Guidelines for Contracting and Procurement

- before contracts are executed
- before variations to contract are agreed
- as and when issues arise during contracts

Direct Negotiations

Direct negotiations¹ (ie exclusive negotiations entered into by an organisation with a prospective provider or buyer without first using a competitive process) are, at times, legitimate but the reasons for direct negotiations should be formally justified and documented in advance to substantiate that best value is being achieved.

Direct negotiations and sourcing activities must not be used for the purposes of avoiding competition, or to discriminate against any business.

Who Should Negotiate?

Negotiations should only be undertaken by those with experience and skills in the areas who are familiar with negotiation techniques and strategies.

For significant purchases, a team of negotiators may be appropriate. If a team is to be used in negotiations, a leader must be pre-defined and roles and responsibilities of members also must be clearly pre-defined. The composition of the team needs to support the negotiation plan.

What Can Be Negotiated?

In order to explore opportunities for maximising the overall opportunities available, the following aspects may be considered for negotiation as well as negotiation on price occurring:

- Technical and Support
 - warranties, maintenance, support, packaging, freight, sub contracting, use of personnel, installation and testing, training, etc
- Risk & Commercial
 - deposits, payment terms, discounts, penalties, travel costs, insurances, guarantees, service standards, liquidated damages, performance incentives, etc
- Management Information
 - reporting, documentation, service levels, meeting attendance
- Timeframes
 - completion, delivery, milestone dates, length of contract

¹ Refer Direct Negotiations - Guidelines for managing risks in direct negotiations (ICAC)

Negotiation Framework And Guidelines for Contracting and Procurement

Tender negotiations shall not be used as an opportunity to trade-off one tenderer's prices against other tenderer's prices in order to obtain lower prices. This practice, known as "bid shopping", is prohibited.

Methods of Approach to Negotiation

The following methods of persuasion and negotiation are listed in the order in which they should generally be applied. Of course, different circumstances will at times dictate a variation on the order and this should be assessed in the context of preparing for a negotiation process.

Emotion

Emotion should be used early in a negotiation process to increase the perceived value of your negotiation, but should be used strategically and not overused.

Emotion is based on feeling and can be difficult to rebut as it is an intangible and hence is a powerful negotiation approach if used strategically and not overused.

Emotion can be effectively used to maintain position against a factual or logical approach.

Logic

Facts and logical thought can be used to give weight to a position or to more clearly demonstrate the position provided it is used strategically (drip fed, not all at once).

It is preferable to get your logic across first in a negotiation, thus requiring the other side to try to counter it.

Overall, don't be too quick to ask "Why?" as a skilled negotiator will have a ready response to such a question.

Threat

Threat or implied threat can be used to force the other party to move on a position; however this can create a win / lose situation and needs to be considered in terms of impact to overall outcomes of negotiations and the long term business relationship.

If threat is to be used:

- use a later option
- threaten at the business, not the person
- never make a threat you can't carry out

Bargaining

Rather than compromising on each issue, it may be better to trade benefit on positions, so be willing to offer movement on one issue to get the ideal outcome on another.

Negotiation Framework And Guidelines for Contracting and Procurement

If bargaining is to be used:

- don't expose your position too early
- don't seem to eager to move
- don't put down "markers" (eg never reveal your deadlines or specific details... but always try to get the other party to put their markers down)
- move slowly and in small and increasingly smaller steps/increments as this signals when you're nearing the end of your negotiable position
- exchange things of small value for things of higher value
- "Thank and Bank" (acknowledge every concession and then move on)

Compromise

This involves both parties making concessions on their ideal position and is usually reserved for overcoming an impasse and all other avenues have been exhausted. Meeting in the middle (or 50/50) is not the only compromise.

If compromise is to be used:

- use it as a last resort
- encourage the other party to offer a compromise position as the party suggesting the compromise is more likely to accept the other's position

Negotiation Cycle

1. Preparation

a) Know the Market Place

Get to know the marketplace of the good or service being negotiated as knowledge will enable better decision making and help identify poor value for money.

b) Understand the Other Party

Get to know the company and the key people you will be negotiating with. Understanding their drivers and style will assist in identifying the issues / needs of the other party and knowing their style may assist in picking the approach and / or team to take into the negotiation process.

c) Set Objectives

Set a range of SMART objectives and targets. Identify a range of variables and know their value to you and to the other party. Identify your strengths and their weaknesses and conduct a SWOT analysis.

Negotiation Framework And Guidelines for Contracting and Procurement

2. Planning

a) Identify Requirements

Consider physical requirements (location, seating plans, timing, distribution of the agenda, etc)

Identify what outcomes you require. (Ideal Position) and what degree of flexibility you have on each item (Fall Back Position) and also what your bargaining tools will be.

b) Anticipate

Identifying the likely needs / interests of the other party and agreeing a position / counter argument ahead of time helps to take some of the risk out of negotiation.

c) BATNA (Best Alternative to a Negotiated Agreement)

One of the greatest dangers in negotiation is being too committed to reaching an agreement that you would be better off without.

It is important to understand that a good understanding of BATNA is a source of great power in a negotiation exercise. Your power in negotiations lies in your “walk away” alternatives, the more alternatives, the stronger your BATNA.

However, whilst knowledge of your “walk away” options is important, unless being used deliberately to show a strong position, it is generally not advisable to disclose your BATNA or “walk away” alternatives as this may be seen as a signal of non commitment to the negotiation.

To understand BATNA, it is important to consider *“what will/can we do if this negotiation isn’t successful?”*

It is important to canvass all options and alternatives upfront to consider what (if any) alternatives to a negotiated agreement exist.

Not knowing your BATNA risks entering into agreements which you might be better off without.

BATNA is not:

- the same as a “bottom line position”, which denotes the worst possible outcome that could be achieved and can at times inhibit creativity and innovation to reach an outcome
- concerned with what should be achieved, but requires a consideration in advance (and during the negotiation process) of what (if any) alternative courses of action are available if an agreement is not reached within a certain timeframe.
- a preconceived decision to enter into a negotiation with the intent of deliberately not concluding the negotiation (ie it should be seen as an “insurance policy” for the negotiation)

Negotiation Framework And Guidelines for Contracting and Procurement

The stronger the BATNA the greater the ability to “walk away” from an unsatisfactory negotiation and if an impasse is reached you are clear on how to handle the situation and can avoid labouring the process and risking damaging relationships.

The planning stage must therefore include a realistic exploration and identification of BATNA.

3. Opening

- a) Create rapport (warm but tough/firm greeting)
- b) Controlling the opening allows you to take the lead position.
- c) Identify the common ground and state objectives.
- d) Use open language
- e) Remember to listen carefully, allow the other party to talk and gather information
- f) Table your expectations and reduce their expectations (but don't disclose too much information too early)

4. Testing

- a) Identify Other Party's Position

Use questions to establish the other party's needs and begin testing your counter positions and assumptions.

“Fly Kites” and see where there is “interest”/‘markers’ are, but DON’T put down your own ‘markers’

- b) Identify Level of Flexibility

Try and establish the level of flexibility of the other party on key issues and plan your persuasion appropriately.

- c) Identify Weaknesses

By picking up on areas where the other party's arguments / position are and not strong and highlighting this it helps.

5. Moving

- a) Try to convince the other party that their current position is untenable and that they need to move to achieve a workable solution.
- b) Try not to move yourself until you have exhausted all methods of approach and if you move stress and emphasise the value of your movements as sacrifices
- c) When it becomes clear that you will need to move, move slowly and in decreasing (not increasing) increments and be aware of your fall back position and the cost of movement from the ideal position to the fall back position.

Negotiation Framework And Guidelines for Contracting and Procurement

- d) Ensure you are getting something of greater or equal value from the other party as a concession for moving away from your ideal position.
- e) Use movement towards a fall back position on a lesser issues as a bargaining tool for achieving ideal position on a bigger issue.
- f) Don't put down "markers" (eg never reveal your deadlines or specific details... but always try to get the other party to put their markers down)
- g) "Thank and Bank" (acknowledge every concession and then move on...using words similar to "thanks for that, I'm happy to accept the offer... can we move onto....")

6. Closing

- a) Know when to conclude (eg common signals: concessions getting smaller, repeated use of 'no', use of 'final offer', body language, etc)
- b) Summarise outcomes and ensure agreement has been reached.
- c) Identify any follow on actions and allocate responsibility.
- d) Document outcomes for future circulation / records.
- e) Identify next steps and allocate responsibility.
- f) Ensure that all negotiated outcomes are captured in the contract before approval and contract commencement.
- g) Review your performance. How did you perform against your original objectives and what lessons have you learned that can be used to improve future negotiations?

Results of a Successful Negotiation

Well conducted negotiations leave all parties committed to achieving successful outcomes.

A successful negotiation will result in an outcome which is:

- fair
- durable
- meets the legitimate needs of both parties
- doesn't damage and preferably improves the relationship between both parties

Compare the results back against the SMART targets established in the planning phase.

Evaluate what worked / didn't work and areas for improvement and learn from mistakes.

Negotiation Framework And Guidelines for Contracting and Procurement

Summary

Poor preparation and conduct of negotiations will often result in delivery of an unsatisfactory good or service and create a contract that is very difficult to manage.

Major issues should be resolved and agreed up front during the negotiation process as this is the period where there is little cost and impact to the end product. To try and resolve these issues later almost always involves significantly higher impact to cost, scope, quality, risk and good working relationships.

References:

- Direct Negotiations - Guidelines for managing risks in direct negotiations (ICAC)
- NSW Procurement Policy Framework June 2015

Appendices:

Appendix 1 – Tips for Effective Negotiation

Pages 12-13

Appendix 1- Tips for Effective Negotiation

1. Remember you're the expert

You often have to negotiate products or services that you may not really understand. Think of negotiation as education.

2. Negotiation is a two-way street

Negotiation is a process of give and take. When the supplier gives you a concession, they will most always ask for something in return. Be prepared.

3. Hold firm to your principles

Don't forget you have something the supplier wants; they need you as much as you need them. When something is important to you, stick to your guns. Suppliers will respect you for it.

4. Don't be intimidated

Do not automatically accept the contract terms a supplier suggests/offers you. Remember, it's their job to get the best possible outcome for their company. That's your job too.

5. Performance Clauses

Be particularly aware of negotiating punitive contract clauses, such as late fees or liquidated damages, term reduction for poor performance etc.

6. Don't celebrate until the contract is signed

The negotiation process has many twists and turns and what looks good today might not look so good tomorrow.

7. Respect the process

In a formal tender, buyers and sellers are bound by probity rules to ensure a fair outcome for both parties. If a buyer or their employees unwittingly let confidential information slip, it could jeopardise everyone's chances. Tendering is part of the University's business development strategy, keep it clean.

8. Silence is Powerful

Use it to your advantage to allow time to think and construct a response and it is an effective way of controlling the pace of negotiations and putting off your supplier.

9. Don't Personalise

Separate the people from the problem and treat individuals with respect. Ask questions in a neutral manner that does not offend or insult and disagree constructively and politely.

10. Break the Cycle of Attack and Counter Attack

This cycle is counter productive and will not foster an environment where your supplier is likely to move towards your objectives.

Appendix 1- Tips for Effective Negotiation

11. Address all Issues

Get all issues into the open as secret agendas can destroy an agreement later.

12. Sweet before Sour!

Acknowledging the strengths in the supplier's proposal or positive past performances before identifying weaknesses can make them more receptive to considering your point of view.

13. "No" doesn't always mean "No"

Don't accept a "no" at face value; ask questions to understand what is required to turn a "no" into a "yes".

14. Control the Negotiations

Leading the agenda, tabling the objectives, and control the pace of the meeting all help to assert your position in the negotiation process.

15. Acknowledge and Accept Concessions

When the supplier offers a concession, acknowledge this, thank them and move on. This promotes good will and can defuse or distract their need to pursue a reciprocal concession.

16. Separate Complex Issues

Breaking down complex issues ensures all aspects are discussed and assists to make the issue appear more manageable.

17. Listen and Learn

Once the agenda has been tabled and the objectives defined, let the supplier talk first and try and get them to establish their position. This allows you to assess their strengths and weaknesses and identify strategies without giving away your hand.

18. Ask Questions

Asking questions allows you to draw out the suppliers goals and objectives, it also allows you to clarify, confirm and test their position and is a way of controlling the process to give you time to respond once you have more facts on the table.

19. Location

Consider where the meeting will be held. Holding it on site means you know the venue and environment and have information / resources on hand, but it also means you may need to play host and look after the supplier needs which can be a drawback.

20. Review Performance

Review the process post negotiation and understand what worked well and what didn't and capture the lessons so you can improve the process in future.