Negotiating Long Term Agreements

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Before we start...

SAFETY AS A PRINCIPLE

Personal responsibility ...
Our visitors &
Our family &
Our friends &
Ourselves

Buyer =
Contract Administrator =
Contracting Officer =
Supply Chain Manager

Contract =
Purchase Order =
Agreement

LANGUAGE

Taylor’s background and perspective

Discussion:
Value of a Long-Term Relationship

Buyer
- Reduced acquisition costs
- Shorter acquisition cycle
- Predictable costs

Seller
- Reduced selling cost
- Predictable demand

Reality: We negotiate long term relationships in our personal lives - often

What do we want to accomplish today?

A Different Perspective
Strategy
Opportunities Discussion
Tools and Tips & Tactics

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The Art of War

Win Without Fighting!

Prepare for war but do everything you can to win before it starts

Problem:

“Negotiations were not conducted because”

- Too expensive
- Too much work
- Too much time
- Too many people involved
- Lack of management support
- Lack of inspiration
- Lack of energy
- Diminishing returns
- Inexperienced
- Public bidding process
- Narrow definition

We know how to negotiate
- Normal part of the job
- Seek incremental benefits
- Long term success is a shared responsibility among all departments
- Based on company & organization goals
- We know how to find responsible sellers

Solution:

Change the way we think about negotiations

Poor Negotiation = Unbalanced agreement

- Incomplete contract
- Changes & claims
- Malicious compliance
- Seller loses money
- Buyer pays too much
- Contractor fails
- Legal costs
- Starting over

Buyer & Seller can both lose contract negotiation
Not a heated wrangling between teams of lawyers and accountants
A set of tools and work processes to meet our needs and attain our goals incrementally
A communication process used to reach a common understanding
Each detail resolved - is a successful negotiation
A team can outperform an individual

Even the most complex contracts consist of many finite elements

Strategy:
We are always negotiating

Strategy has been approved internally
Organization is aligned
Targets are established
Tactics part of day-to-day process
All communications reinforce our intent
I will manage the process

How Do we Start?

Our New Target
A successful contract that both parties support
Most negotiations are over before they start
What will each gain in agreement?
Pick the person, place and time
Who will decide & how?
Include powerful friends only if you can control them
Intangible allies: precedent, policy, president

It’s Never Too Soon To Plan....

The problem with conflict of interest; it is not obvious to everyone
Your leadership test & responsibility
Colleagues, management and staff
We all want to support our company
Explain common mistakes:
- you’re the sole source...
- competitor can’t...
- we have a deadline...
Give people credit and recognition
They won’t feel like they have to grandstand

Train Your Team

We can add value by....
Extra costs include...
Is this an illegal action?
We would have also included...
Have we considered these risks?
Does this violate company policy?
Have we provided for follow-on requirements, warranty, service, etc.?
Since we are both trying to make the best decision for our company, we should consider alternatives....

Negotiating With The Boss

Help manager make informed decisions

Listen & Read
Ask questions
Propose accurately
Accountable
Earn their fee
Support policy
Be honest

I Expect Responsible Sellers Who...

What do sellers expect from us?
- Complete contract goal
- Smooth working relationship
- No surprises!
- Successful performance
- Satisfied organization
- Option and interest by both for a continued relationship

**Sellers:**

*We have common objectives*

We can both win a contract negotiation

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**The common enemy =**

A malformed contract

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**Strategy:**

- Establish expectation and be consistent
- Bring information
- Bring suggestions
- Solve problems
- Earn the business

**A sales call interview checklist**

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**Are we Negotiating?**

<table>
<thead>
<tr>
<th>SOLICITATION</th>
<th>PROPOSAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 ea., 70K A/C unit, complete</td>
<td><strong>Extended Warranty</strong></td>
</tr>
<tr>
<td><strong>Tight</strong></td>
<td><strong>EPA approved</strong></td>
</tr>
<tr>
<td><strong>Solid Frame</strong></td>
<td><strong>Experienced installers</strong></td>
</tr>
<tr>
<td>Award-winning design</td>
<td><strong>Who is doing a better job of negotiating?</strong></td>
</tr>
<tr>
<td>Buyer/Seller</td>
<td><strong>Somebody</strong></td>
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- Give the seller a chance to sell
- Demonstrate responsiveness
- Demonstrate responsibility
- Explain about prices and costs
- Data to prepare for changes
- Contingency information
e.g. Spare parts lists, warranty, service, operating manuals
- Supplier’s price strategy
e.g. price discounts, learning curve, delivery, production, raw materials, sourcing, inventory

**Solicitation; A buyer’s sharpest tool**

What value can procurement add to a solicitation?

- Personnel issues
- Past performance issues
- Delivery problems
- Product defects
- Delays
- Lack of proposal detail
- Status & progress reports

**RFP Targets Weakness**

How can we proactively solve this issue in the solicitation?

- Negotiate before bidding starts
- Information is power
- Buyer Advantages
- - Process and schedule control
- - $$$$$
- Weakness can be mitigated
  Preplanning, fact finding, better solicitation, trained seller, internal support

**Formal Bid Challenge?**

Even in a formal bid process, we have leverage

Technical folks might prefer a do-over rather than the alternative
Demonstrate understanding
Resolve minor irregularities e.g. page numbering is wrong
If we need the info. to make a selection decision = BAFO
Improve value added = BAFO
Material change = BAFO
GAO case references

Clarification vs. Discussion
How can we avoid this situation next time?

Gather information
From your team as well as the seller
Tour, travel and read
Hard questions are easier when not negotiating
Listen more than you talk
Confirm all assumptions
Other customers
Competition
Record, save & share

Ask Questions
• Don’t assume anything. Verify everything.
• Do I have to buy materials in standard quantities?
  – I end up with more material than I need to make the current order.
  – Scrap value. Does the left-over or waste material have a residual value?
• What is the optimum labor mix?
  – Is it more cost effective to have more skilled labor at a higher price?
• What are the critical-path cost elements?
  – Make or buy options?
  – Commodity pricing and hedging
  – Subcontracting risks
  – Strategic Materials, labor agreements,
  – Price volatility
• What are the recurring vs. one-time costs?
  – Special tooling vs. near and long term savings
• Why is the price set at this level?

Sole Source
Preferred Source
Long Term agreement
International & offshoring challenges
Urgent need
Warranty & repairs
Regulations

Strategy:
Prepare for the tough challenges
What can we do today to mitigate tomorrow’s problems?

If it was easy; engineering could do without us
Build Consensus

- Establish effective communications
- Gain understanding
- Build trust and honesty
- Find common elements
- Each agreed detail is one step closer to a deal
- Record, repeat & reinforce

After a lot of little agreements – it’s a long way back - no one wants to start over

Seek Common Objectives

- Model: A middle-east truce
  - Establish trust, seek common goals and share in the efforts to attain peace

Examples:
- A sole-source product
- An emergency service call
- A fire system pump...
  - Both parties want a successful transaction – that’s a start

What else do we both want?

- Trust & respect
- Collaborative attitude
- Open & honest communication
- Understand the needs and goals of each participant
- Work together to mitigate risks
- Seek an agreement that encourages successful performance

People and their personalities are an important component of every attempt to reach an agreement?

Success Depends On People

Warning
- Relationships are important – but ultimate test will be in the written agreement
  - People will change
  - Opinions will change
  - Circumstances will change –

Writing must survive reorganization

If the seller doesn’t want our money, what does he want?

What might the seller like to have that I can offer?
Add Value by Negotiating Missing Details

- Reduce cost and administration
- Enhance the ROI
- Reduce performance risks
- Mitigate future problems
- Change the nature of the transaction to strategic
- Contract element checklist

+ Contingency
+ Conditional
+ Essential
+ Optional

Can we use negotiation tactics and strategies and maintain a good working relationship?
Can we use these “tactics” without being mean or cruel?
Can we use these “tactics” on a friend?
Example: T-day, it can be done and you get better at resolving the incongruity with practice
Bottom Line: We practice win-win negotiating all the time

Reality Check

- Protect against competition
- What the market will pay
- Cover Costs
- Desired Profit
  - vs.
- Customer loyalty
- Perishability
- Quantity & trade discounts
- Distributor discounts

Selling Price Strategy

- Direct Cost
- Indirect Cost
- Other Factors

Special deals
Closeout Sale
Loss leaders
Parametric pricing
Bulk pricing
Buy 2 get 3
Baker’s dozen donuts
General Mills & Costco team up to sell a 4lb box of Cheerios
Free Shipping!

What can we learn from these seller tactics?

Are we negotiating?
What does the price include?

*Supplies (how much)*

What does the price exclude?

*Extra cost items?*

Primary price drivers?

*Mobilization, delivery, labor*

What are we missing?

Strategy: *Get a Price Breakdown*

- What does the price include?
  - Supplies (how much)
- What does the price exclude?
  - Extra cost items?
- Primary price drivers?
  - Mobilization, delivery, labor
- What are we missing?

*Strategy: Get a Price Breakdown*

What we know (or not) about pricing will help later

2 X the work ≠ 2X the price

- What can be changed? to improve the overall value
- Can we reduce seller’s cost? and our price
- What else can the seller do? at no extra cost or less than mine
- Can we remove complexity? and reduce risks
- What are we assuming? that should be verified
- What is the contract missing? That should be added
- What might change in performance?

*Concessions are not always price*

Unbalanced value

- elements of the contract are often worth more to one party than the other

Separate cost elements – look at the details

Unrelated cost drivers

Collaborate on cutting costs

Cost savings that can be shared

*Cost Targets*

Focus on what & why

Identify indirect cost elements

Eliminate if possible

Add to contract

*Indirect Strategy*

Increase the value of the contract by including all of the indirect benefits which are available. Even if we can’t negotiate a lower price, we can get more value and a better contract.
Costs =
Long-Term Negotiation Opportunities

Price vs Cost
• Pricing serves many purposes
  – New customers, move inventory, Market-based, competition, loss-leader
  ......and sometimes make a profit
• Price is arbitrary
  – Prices can be negotiated
• Costs are business expenses
  – Costs must be mitigated or avoided

Consider TCA
• Evaluate the total transaction costs (for both buyer and seller)
• Price + TCA + TCO + COS, etc. etc.
• A valuable concession is not always price
• Transfer costs to the party best able to manage the cost
  – Costco example

Negotiation $ Targets
Direct Costs
Indirect Costs
Profit
Retail Price
Negotiated Price
Unearned Profit

Buyer & seller benefit from reduced costs
**Costs:**
- Direct
  - Material substitution
  - Buyer supplied material
  - Scheduled production
  - Delivery options
  - JIT
- Indirect
  - Transportation
  - Storage
- G&A
- Training
- Profit

**Opportunities**
- Material substitution
- Buyer supplied material
- Scheduled production
- Delivery options
- JIT

**Opportunities -soft**
- Training
- Spares catalog
- Publicity
- Upgrades

**Costs:**
- Direct
  - Labor
- Indirect
  - Transportation
  - Storage
- G&A
- Training
- Profit

**Opportunities**
- Extra Castings
- Drops & excess
- Shop failure rate is really 8%?
- Inventory shrinkage
- Schedule flexibility
- Delivery flexibility
- Tooling, templates, molds

**Even More Cost Opportunities**
- Labor to fabricate and service
- Labor category changes
- Learning Curve, setup time
- Raw material specification
- Material substitution, subcontracting, strategic materials, inventory value, acquisition assistance
- Training & downstream support
- Spare parts lists & inventory
- Marketing and advertising
- Audit and regulation support
  - e.g. sustainability, human rights

**More Cost Opportunities**
- Extra Castings
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**Handout**
- Review this list for each action
When the Talking Starts

Don’t forget to listen
Don’t forget to stop talking

- What do we think we know?
- What don’t we know?
- What the seller need/want?
- What is motivating the seller?
- Who will decide?
- Why/when would they walk?
- Is failure an option?

Verify Facts & Assumptions

- Your price is preposterous
- You’re trying to cheat me
- You’re not the low bidder
- You can’t be serious
- I want to buy
- I need
- I can’t accept
- You are the worst salesman...

Language Language Language

This is a disaster – we’re all gonna die...... or

"This justification would be better if we..."

“I think we have reached a positive outcome given the circumstances”

“It looks like we have some opportunities for long term improvement”

Practice Positive Speak

Say it how you want others to feel it
Don’t trust anyone else to write it. The written agreement must be exactly what you want it to say.

- Plain language, bullets not prose, clear intent and meaning
- Daily summary, action items, points of agreement and contention
- Include performance requirements and important contract elements
- Timely distribution - everyone has a fair chance to confirm or disagree
- Better to find out about a misunderstanding before the contract is issued.
- Anything you don’t say – won’t happen
- Teamwork to make sure it’s complete

A Few Words About “The Record”

Un fortunately, not all contractors want to collaborate and sometimes we need to help them understand that working together is better than working alone.

If we can’t trust the contractor to sell it at a fair price, or perform as promised, then it’s time to employ a few more direct tactics.

Strategies and Tactics –

Sometimes we have to push…

Make sure you get an answer
- Keep asking
- Focus on the issue not people
- Is there a competitive product?
- What makes yours better?
- Why can’t you.....?
- How many have you had to fix?
- What is the turn time for fixes?
- How can we make this happen?

Ask Leading Questions
Ask Better Questions

- Do I get a price break? How much is our price break?
- Do we get maintenance service? How long is the maintenance coverage?
- Do I get a warranty? Please explain the warranty

Shape the answer you want with the question you ask

- Does it come with a spare tire?
- Is mounting hardware included?
- Has “it” been approved before?
- Are your personnel qualified?
- Do you have references?
- Are you registered in CCR?
- Will you get a DUNS number?
- Does the pump include a coupling?
- Is mounting hardware included?
- Has it been approved by this city building inspector before? Where? When? Who?
- Where is the approved repair station?
- What are you going to do if it doesn’t work?

Is there a better way to ask ????

- Who’s problem is it?
- If it’s not your problem, don’t waste energy fretting about it
- Who is in the best position to solve the problem?
- Get the ball over the net and clearly in the hands of the person who can resolve it

Competition is a powerful friend!
- Collateral information and facts about product and other work
- Strike first
- Invitation to participate
- A comprehensive solicitation
- Ask the right questions
- Pick when and how to order
- This isn’t my first rodeo

Add Pressure

Serve The Ball

- Who’s problem is it?
- If it’s not your problem, don’t waste energy fretting about it
- Who is in the best position to solve the problem?
- Get the ball over the net and clearly in the hands of the person who can resolve it
When is the best time to talk with a salesman on a commission?
- I’d buy today… if the deal was right
- I can sign the order now
- You mean .. you want to turn the deal down?
- I’d prefer to work it out … rather than start over… with someone else
- This could lead to future business

How long is the included warranty?
- What is included in the spare parts kit?
- If we reach an agreement, I will…..
- Did you intend to reject the order?
- What payment discount did you offer?
- What do you want me to do with this non invoice?
- Are you telling me that you plan to breach the contract?

I’m on your side, the boss won’t like it
- Just one more thing after another
- I thought we agreed?
- It isn’t in the budget
- The plumber principle
- Not our normal process
- Our Procedure/policy won’t allow it
- It’s not in the contract

No one does that...
- I know they don’t ...
- Not normally what they do
- Seller will charge extra...
- I didn’t think they could...
- It should …
- I assume…
Change the terms
- If we agree to a 2-year purchase can we make a deal?

Change the people
- Is there someone who does have the authority?

A way to save face
- Blame it on a typo

A way to sell it
- This is a great opportunity for long term business

I always ask for 10%
- Please – because you like me
- I just have one more thing

Losing control of the negotiation

Negotiating with the wrong person

Make a checklist & refer to it often
- Identify important issues
- Confirm assumptions – check facts
- A cheat sheet of good questions
- Build the contract as you go
- Communicate often and effectively
- Anticipate and prepare
- Failure analysis

Good Buyer
- Makes decisions ahead of time
- Avoids the cow pies

Good negotiator
- Consistently reaches an agreement

Win-win negotiator
- Good buyer and seller relationship

Ethical negotiator
- Earns respect – not revenge

Great Negotiator
- = all of the above

Personal Action Plan

Recap
We Are Better Negotiators!

*We can win the war without fighting a battle*

**Bottom Line**

Assembling a better contract

Isn’t that what we always wanted?

**Contractor Responsibility Checklist**

1. WARNING FLAGS – issues suggesting additional reviewer explanation
2. MANDATORY CRITERIA – items unique to the action or process

**FINANCIAL & BUSINESS OPERATIONS**

- Item 1
- Item 2
- Item 3
- Item 4
- Item 5
- Item 6
- Item 7
- Item 8
- Item 9
- Item 10
- Item 11
- Item 12
- Item 13

**References & Resources**

- Negotiation articles
  [www.mltweb.com/tools/tools.html](http://www.mltweb.com/tools/tools.html)
- Negotiation presentations and handouts