

# Negotiation Tips and Tricks

## Exercises & Discussion

- A. Why do we care about negotiation?
  - a. Negotiating Price in a Competitive Environment
  - b. Create additional value in the agreement
  - c. Team Building and Conflict Management
  - d. Project Management
  - e. Salary Negotiations and Career Advancement
  - f. Allocation of limited resources among various
  - g. Crisis Intervention
  
- B. What makes a good negotiator?
  - a. Doesn't take negotiation for granted. Realizes that the process is a requirement of the job (and many other things in life) then spends some time preparing
  - b. Realizes that you should negotiate for you they want rather than demand it
  - c. Realizes that the experiences, past relationship and preparation for the negotiation will have a significant effect on the outcome
  
- C. What makes a good negotiator great?
  - a. Knows how to steer the discussion so that the negotiation adds value for both sides to the eventual agreement
  - b. Can develop a valuable outcome for each side regardless of initial demands or proposals
  - c. Knows where the 'walk-away' limits are for both parties
  
- D. What tactics, comments, proposals, etc. are used against you in a negotiation that turn you off or make you defensive? How can we avoid doing that?
  - a. Whining
  - b. "X" says
  - c. Take it or leave it
  
- E. Use one of the TIPS listed below as a discussion topic with your peers. Ask the question; How can we apply this principle to our daily workload?
  - a. Example: List common questions that have to be asked when developing a contract. Brainstorm better ways to ask the questions.
  
- F. Discuss one or all of the questions from the S.A.B. Negotiation Enterprises Test of Negotiation Skill (see reference link below).

# Tips

1. Great buyers negotiate more than just the price.
  - a. <http://www.mltweb.com/tools/negotiate1.htm>
2. Expand your focus. You are negotiating with a person/organization that has past experience, concerns, doubts, beliefs and assumptions. They must all be addressed during the discussion before a lasting agreement can be reached.
  - a. Balance the needs of the people to feel satisfied vs. the need for the complete agreement to stand alone
3. Win – Win Negotiation; who is the Opponent?
  - a. [http://www.mltweb.com/tools/win\\_win\\_oponent.htm](http://www.mltweb.com/tools/win_win_oponent.htm)
  - b. The buyer and the supplier are negotiation partners and a poorly formed or incomplete contract is the enemy.
  - c. <http://www.mltweb.com/tools/negotiate1.htm>
4. Note to new buyers: A concession isn't always price.
  - a. <http://www.mltweb.com/tools/negotiate4.htm>
5. Evaluate Past Performance
  - a. <http://www.mltweb.com/tools/buytrain/pastperform.htm>
6. Develop a better way to characterize issues and use language to diffuse the situation and steer the discussion.
  - a. <http://www.mltweb.com/tools/negotiate3.htm>
7. Ask Leading Questions. How you ask is as important as what you ask.
  - a. <http://www.mltweb.com/tools/leading.htm>
8. Negotiate the "Full Meal Deal"
  - a. <http://www.mltweb.com/tools/fulldeal.htm>
9. The Whole is sometimes greater than the Parts
  - a. <http://www.mltweb.com/tools/whole.htm>
10. Don't Be Afraid To Negotiate
  - a. As long as you are being fair and honest with the supplier, it doesn't hurt to ask.
  - b. As enough questions to make sure something isn't being missed
  - c. <http://www.mltweb.com/tools/fraid.htm>

## References:

1. Issues To Consider Negotiating
  - a. <http://www.mltweb.com/tools/what.htm>
2. The Negotiation Skills Company
  - a. <http://www.negotiationskills.com/index.html>
3. The Negotiation Institute, Inc.
  - a. <http://www.negotiation.com/>
4. Program on Negotiation at Harvard Law School: "A resource center for people interested in learning and teaching about negotiation and alternative dispute resolution."
  - a. <http://www.pon.org/catalog/index.php>
5. Ross Reck's Weekly Reminders
  - a. <http://www.rossreck.com/nl/browse.asp>
6. The InterNeg<sup>®</sup> Group: "Research and training, and develops materials and systems for decision making and negotiations."
  - a. <http://interneg.org/interneg/overview/index.html>
7. S.A.B. Negotiation Enterprises
  - a. <http://www.sabonline.com/>
  - b. S.A.B. Negotiation Enterprises Test of Negotiation Skill
  - c. <http://www.sabonline.com/test.php>
8. Machiavelli's Workshop: "defines its business as the secrets of power and persuasion packaged as fun. It develops games of negotiation strategy that enable people to test and improve their strategic negotiation skills in a fun and time-flexible environment. Online negotiating games. Corporate training games & workshops"
  - a. [http://www.machiavellisworkshop.com/about\\_us/index.html](http://www.machiavellisworkshop.com/about_us/index.html)
9. The Negotiating Edge: "a global consulting company that provides training and consulting services" Order free negotiating white papers
  - a. <http://www.negotiatingedge.com/index.shtml>
  - b. Reading List: <http://www.negotiatingedge.com/additionalreading.shtml>
10. Shapiro Negotiations Institute: "SNI creates customized negotiation seminars and corporate training based on The Power of Nice: How to Negotiate So Everyone Wins, Especially You!"<sup>®</sup>.
  - a. <http://www.shapironegotiations.com/>
  - b. Negotiating Your Next Raise
  - c. <http://www.shapironegotiations.com/Uploads/Docs/getaraise.pdf>

- Availability
- Administrative charges
- Alternate Dispute Resolution
- Amortization schedule
- Audit rights
- Barter arrangements
- Cancellation charges
- Confidential information
- Contingencies
- Copyright
- Changes
- Cost Breakdown
- Counter trade
- Currency
- Customer visits
- Damages
- Delivery
- De-mobilization costs
- Discounts
- Electronic data interchange
- Electronic funds transfer
- Exchange rates
- Exchanges
- Extended warranty
- F.O.B. point
- Fee
- Freight method, costs and charges

- Installation
- Insurance
- Intellectual property rights
- Inventory Costs
- Invoice method
- Invoice terms
- Labor rates
- Lead time
- Legal venue
- License agreements
- License fees
- Maintenance
- Marketing support
- Manufacturer's allotment
- Mediation
- Meeting locations & schedule
- Mobilization costs
- Multiple deliveries
- Overages
- Packaging
- Payment terms
- Payment method
- Performance specifications
- Price
- Price escalation
- Profit

- Progress payments
- Quality rate
- Raw materials
- Recycled content
- Residual value
- Restocking charges
- Returns
- Risk of loss
- Safety Stock
- Scrap recycling
- Spare parts pricing/availability
- Special marking
- Specifications
- Stand-by rates
- Start-up assistance
- Subcontracting
- Termination Provisions
- Terms and conditions
- Testing
- Tooling
- Training
- Travel expenses
- Upgrades
- Warranty

### Add these to the list when Negotiating Long Term Relationships

- Access to Computerized Inventories
- Access to Computer Systems
- Authorities and limitations
- Computer Security Program
- Controlling problem people
- Cost cutting procedures
- Disposition of user data
- Efficiency improvements

- Ending the contract/relationship
- EXTRANET ordering relationship
- Fair profit vs. fair value
- Goals of the relationship
- In-Plant Support, inventory
- Internet Web Page Sharing
- Key players
- Legal recourse
- Operating procedures

- Power balancing
- Problem resolution process
- Product improvements
- Reporting
- Removal of packaging materials
- Sharing of cost savings
- Structure of the agreement
- Term
- Training programs
- User Catalog Maintenance

## Creative Negotiation (part 4)

Note to new buyers: A concession isn't always price.

One of the best strategies you can use to move a stuck negotiation forward is to change the deal. What if we; buy two instead of one, take delivery somewhere else, agree to take it unpainted, change the packaging, etc.

This works because suppliers and buyers have much more to trade than just price. Consideration, concessions and incentives, come in many forms and vary with each deal. Most importantly, the various types of consideration we exchange have different values to each party in the contract. That is, any one item may be of more value to the buyer than to the seller. Great negotiators understand this principle and use it a lot.

Here are some obvious examples to illustrate the point.

- If the plant is shut down and delivery is critical are the extra few dollars in the price worth as much to the buyer as to the supplier?
- If the product has a very short shelf life does the minimum order quantity become a much more important issue to the buyer? What about to the supplier if the product has to be produced in large batches?
- If a supplier has a delivery truck already half full, he can afford to give away the rest of the space, just to get a better freight rate on the first half, but the buyer would have to pay full price to have it delivered by someone else.
- A supplier's cost to produce an item isn't the retail price charged. So a supplier can afford to deal on the second item and would rather do so, than discount the first purchase.

Example: It costs the pump company \$900 to make the pump and cover overhead costs. They add \$100 profit to sell the pump to me at \$1000. When I buy one pump the manufacturer makes \$100. If I ask for a discount, the manufacturer makes less profit. However, if the manufacturer talks me into taking two pumps, then he can give me a \$100 discount, still make a profit of \$50 on each pump, cover more of his overhead, move inventory, etc. while I get a \$100 savings. The manufacturer might save far more than he would have made in profit.

O.K. You get the principle. We see it all the time. But, how to consistently apply it?

Here are some suggestions:

1. Compare the actual cost vs. the selling price of each element of a transaction. Are there markups, overhead, administrative cost and hidden costs? If so, who is paying them, how and when. Then apply all of your skills and knowledge to reducing, eliminating or mitigating the cost.  
Example: Agreeing to pay an invoice by Electronic Funds Transfer (EFT) is a cash flow cost to the Buyer. But generating an invoice, matching a payment and sending it to the bank is a significant processing cost and delay to the seller. Also the seller may have long ago paid for raw materials and have a much bigger cash flow problem. Thus, changing payment terms to EFT could equate to a significant reduction in seller cost that should be reflected in the selling price. The reduction in selling price might more than make up for the cash-flow cost to the buyer.
2. Look at all of the possible variations that can affect the deal. Check out a relatively complete list of elements to consider negotiating in a contract. <http://www.mltweb.com/tools/what.htm> Chance are, there are one or two items on the list that should be added to the transaction and/or could be changed to save some cost or time.

3. Example: Contingencies are a major cost for casting and forging companies. If the first casting fails, it would be a major expense to have to restart the furnace to pour a replacement. Quite often, to avoid this cost, castings companies will pour extra raw castings (of course those extras are built into the selling price). A shrewd buyer will write the extra raw castings into the agreement and take delivery of the ones that are not needed. The buyer may end up with a few extra castings (which would have been paid for anyhow and could be buyer-furnished-material on future orders) and the seller has reduced risk of unused material. [ note: I used to love to work on casting and forging orders because there were so many money saving variations like this]
4. Consider what and how the seller has to do in order to fill the contract. Can you get your nose into his business and save everyone some time and cost?  
Example: When a 100-line purchase order for office supplies is received by the seller, usually the first step is to have someone keypunch it into his computer. So, if the buyer paid someone to keypunch the items on the Purchase Order it's a duplicate effort for the seller to retype them that adds cost to the transaction. Finding a way to transmit the list electronically so it doesn't have to be keypunched a second time, is a major savings in time, possible errors and cost.

Exercise: *Brainstorm with some of your colleagues.*

1. Create a list of items that buyers and sellers can use for consideration in a contract. List the ones that might have a different value to each. Ask "what can we trade that is of value to one or the other?"
2. For each item, make a list of the ways that the value can change for buyers and sellers. What can affect the value of 'delivery' that we should keep in mind?
3. Take a typical order and list all of the associated costs. Look for duplications, extras and hidden costs that can be eliminated, changed, transferred, or combined with something else.

Start being creative with how you think of the associated costs of orders. Include all of the cost factors in a negotiation, mitigate costs by changing the terms of the agreement and you will truly be a great negotiator.

## Win - Win Negotiation; Who is the Opponent?

It seems like an oxymoron. How can both parties in a negotiation win? How do I explain this process to management and our supplier? Here is another way to look at it that might help.

Before starting the negotiation define and describe the 'opponent'. Get agreement from everyone involved (including the supplier) that the real 'opponent' in the negotiation is a poorly formed contract.

At the least, bad contracts result in delays, added administrative costs, poor quality, degraded performance and inefficiency. If a poorly formed contract "wins" the negotiation then both buyer and seller loose in the long run.

If, through the process of negotiation, you and the supplier create a good contract, that works for both of you, then you both win. Fail to do a good job of negotiating and the resulting contract will likely have problems.

What is a 'good' contract? Here are some examples:

- Meets the needs of both buyer and supplier
- Encourages buyer and supplier to perform well
- Addresses potential problems
- Prevents surprises
- Avoids ambiguity
- Incorporates lessons learned from previous contracts
- Encourages both parties to continue future business relationships

Both buyers and suppliers contribute language, elements, issues, and ideas that help make the contract better. Each party will try to protect his/her best interest, but savvy negotiators know that a "contract which is not profitable" will drive away suppliers or a contract that is onerous will cause buyers to find other sources. If either party fails to do the best job they can of creating a good contract, then one or probably both will loose in the long run.

Mike Estes, C.P.M. summed it up very well. "I think that there are a lot of people (suppliers, buyers, management, and others) who still believe you have to draw blood to prove that you've beaten the other party and thereby assured yourself or your company of a successful/profitable deal.

Not true! Much better .... not to attack each other as opponents but to work together with your counterpart to identify and eliminate the weaknesses, confusion, ambiguity, delays, and other factors that could cause the deal to turn sour now or in the future.

And, if some unforeseen problem should arise in the future, isn't it reassuring to know that due to the teaming relationship that has already been developed, the other party will work with you to help attack and slay the dragon that threatens to undermine and ruin your deal/contract."

Thanks Mike

I think mike and I agree, both the buyer and supplier can truly be winners when they negotiate a good contract.

# Evaluate Past Performance?

October 22, 2003

I was just wondering.

How do you evaluate potential contractors? Kind of a tricky question isn't it. I know, I've been there. Sometimes just finding any contractor is a good thing. However, we all know how bad it can get when the selected contractor has a bad history. When contract problems arise, it's too late to start checking references and reviewing a contractor's past performance history.

A recent General Accounting Office decision highlighted the problem for those fortunate enough to work in the government-contracting arena.

Hold it! Don't change that channel! The general principle applies to non-government buyers as well. [Example: I'd hate to be the buyer who inadvertently hired Charles Manson to run the company day care center].

Read the GAO case; <http://www.gao.gov/decisions/bidpro/292476.htm>

In this award, the buyer made two mistakes:

- 1- Failure to equally evaluate the past performance of all offerors and document the rationale for the evaluation.
- 2- Failure to adequately determine responsibility.

Under government rules, the buyer lost before the contract was awarded. However, absent the government rules any one of us could have awarded the contract and had performance problems develop later.

That's the point. We need to make sure the recommended contractor has a good history and can reasonably be expected to perform well. This general principle required by Federal regulations would probably be expected of buyers in most companies.

So what should we do?

1. Consider a contractor's past performance before awarding a new contract.
2. Determine if the recommended contractor is 'responsible'.

Here are some suggestions about how to do that:

- 1- Check with everyone you can think of who might have some knowledge. Do the same kind of a review you might do before hiring a contractor to build a house.
- 2- Is this contractor licensed in the state, city, and county?
- 3- Is this contractor a member of local community groups and organizations?
- 4- Is this contractor proud of his work? Does he want to provide previous customer references? Do those customers know of any other customers?
- 5- Have there been any claims filed with the BBB or FTC? <http://www.bbb.com/> [www.ftc.gov](http://www.ftc.gov)

6- Run the contractor's name in an Internet search engine? Are there newspaper articles, stories, reports, complaints, praise, and kudos?

7- If the anticipated contract is huge or foreign, hire a professional Due Diligence company to do some research. <http://www.mltweb.com/tools/diligence.htm>

8- Check the legal name of the contractor? Does the contractor have a Tax ID or EIN number ([www.irs.gov](http://www.irs.gov)) and/or a DUNS number? <http://www.dnb.com/us/>. If not why (since they are free to get)?

9- Check the Federal Government's Excluded Parties List. If the Fed doesn't like this contractor and/or some of the principals, why? <http://epls.arnet.gov/>. I think it would be a fair question to ask a potential contractor to explain the listing.

10- Before each award, consciously consider the question, "Is this a responsible contractor?"

11- Ask the contractor to help. "Gee, I'd really like to recommend you for the contract, but I need help proving you are a reputable, experienced and responsible contractor. Can you help me find some information to prove it?"

As part of our process we require offerors to complete a representation and certifications form. We also check to make sure contractors are not on the GSA Excluded Parties List before adding them to our active vendor file. Buyers are also asked to make a responsibility determination before award.

When any professional buyer makes an award, I think they are doing the same thing. "This is the right contractor for the job! I know, because I am a professional buyer and it's my job to make sure we buy from the right source."

Here is what the Federal Acquisition Regulation says on the subject.

### ***FAR 9.103 Policy.***

(a) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.  
(b) No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. If the prospective contractor is a small business concern, the contracting officer shall comply with Subpart 19.6, Certificates of Competency and Determinations of Responsibility. (If Section 8(a) of the Small Business Act (15 U.S.C. 637) applies, see Subpart 19.8.) (c) The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

Good hunting!

Mike Taylor

In the 1970s, Dr. Ross Reck recommended that buyers take a radical approach to negotiating contracts. Instead of adversarial, get-everything-at-all-costs negotiation, Ross Reck suggested that we could benefit more by taking a different approach. Reck called this new negotiation style, Win Win Negotiating. The basic principle is obvious once you stop to consider it. It goes something like this:

The ultimate purpose of most negotiations between a buyer and seller is to achieve an agreement that works for both parties. If both parties are satisfied with the agreement, then the agreement is more likely to succeed. By focusing on common goals, rather than shafting the other guy, and working to create the best agreement possible; the buyer will "win" and the seller will "win".

In support of this idea, Reck published his best-selling book, *The Win Win Negotiator*, and spent the next 20 years traveling around the globe helping buyers and sellers learn to do a better job of negotiating.

In 2001, Reck again suggested a new approach, this time to business management. In his new book *The X-Factor: Getting Extraordinary Results from Ordinary People*, Reck advised business management to focus its attention on those managerial activities that produce extraordinary results from their employees. This strategy has paid off at the company level, in individual work groups and in relations between buyers and sellers.

For buyers, it's a principle very close to win-win negotiating. Focus on the desired outcome and encourage great performance. Consider your best supplier for example. What makes that supplier great? What can you do to encourage great performance in your other suppliers?

# Creative Negotiation (part 3)

January 2004

Effective negotiation isn't always a planned process or major production, it's a habit. By considering all aspects of contract issues before saying anything, effective buyers turn each communication into a negotiation. Lawyers also practice this principle; "What you say, can and will be used against you". In the same way, what you say can make a big difference in the outcome of a discussion.

That is, how you identify a problem or contract issue can and will make all the difference in the ensuing discussions

Here is one example: Remember the shocking stories of the \$999 Airforce pliers? [I have this article on the wall as a reminder] The Airforce bought a special tool for maintaining jets and someone called the tool pliers. Newspapers discovered the purchase and compared the tool to the \$5 pliers you and I buy at the hardware store. It made terrible headlines. In reality, these were specially designed and manufactured, spark-resistant crimping tools for a hard-to-reach spot in a jet engine. But because someone took a shortcut in a document and called them pliers, the door was open to a major public relations problem.

In a negotiation, the same thing happens many times. The words used to describe the situation; problem, issue or concern can have a big impact on the progress made in resolving it. A major issue can grow out of a minor misunderstanding. The opposite is also true. A major issue can be diffused by better (or different) descriptions and phrasing.

The company CEO first exposed me to this principle years ago, when I had only been in purchasing for a few years. I was amazed at how he easily negotiated a potential problem with one of our customers by simply thinking before he said anything. Here is what happened:

We were chrome plating a very long tube for a customer in Chicago. The process leaves a few inches raw at each end (without any plating). About the time we were ready to ship the finished tube, our shop superintendent realized that the specification appeared to require the entire tube to be plated, including the ends. The next reaction was panic and argument among the shop people, the estimator, salesman, etc. When the panic reached the corner office, the CEO took charge.

In this case the CEO didn't react to the obvious specification interpretation problem. He focused on a different issue. The fact that the raw ends of the tube needed protecting when they were shipped was a much more basic question. That's the way he characterized the issue when he called the customer.

The CEO made the assumption the customer knew the process, had allowed extra material for the raw ends and expected the result. He calmly called the customer, gave him the good news "we are ready to ship" and asked how the customer wanted the raw ends protected. When talking to the customer, the CEO changed the nature of the problem and negotiated the issue just by the way he asked the question.

Score one for the effective negotiator.

More recently, I had another manager who was great at doing this. In his words, major issues became a series of minor problems, significant disagreements became simple misunderstandings and contract disputes were distilled into a number of minor questions. He negotiated every time he spoke and still is a very effective negotiator.

We can do this by looking at each contract problem with a critical eye. What is the real problem that needs to be resolved? Whose problem is it, really? Can we describe it differently? Notice, we are NOT focusing on who is responsible. It's the problem, not the responsible person, which needs to be resolved to move the contract forward

So how do we get there? Practice. Start now by looking at common problems differently. Develop a better way to characterize issues and use language to diffuse the situation and steer the discussion. This might be a good exercise at staff meetings or ISM events. Pick a common contract problem and have everyone at the table take a shot at a better way to characterize the issue. MAKE NOTES and keep them close at hand.

Try these examples:

We receive an invoice that doesn't match contract terms. Does the invoice need fixing? Is that where the contractor should focus his attention? Is this really an invoice if it doesn't match the contract, or just a wasted piece of paper? Is this going to result in a "payment delay" or is it more properly an "invoicing delay"? Whose problem is it? Wouldn't you rather have an invoice that complies with contract terms? Can we avoid this confusion in the future by setting up an automatic payment?

When the wrong product shows up, does the specification need fixing? Did the contractor make a shipping mistake? Whose problem is it to get the wrong product back to the contractor? Who owns the wrong product? Isn't the real problem that the contractor hasn't yet performed by supplying the correct product?

When the contract schedule slips, does the promise date need correcting or does the contractor need to explain how he plans to recover? Is the real problem to determine how the delay occurred or is it rather to determine what can be done to get material? Then later, for the long-term relationship; was it a mistake in the quoted delivery date? Was it a problem in communicating production progress? Was it an unrealistic expectation that should have been resolved before contract award? Is it a contractor's normal business practice that should be considered before the next award?

In contract negotiation, the same things happen many times. We have the chance to practice and learn a better way to address issues. The phrasing used to describe the situation can have a big impact on the outcome. Get in the habit of Asking the right Questions and using communication to your advantage.

You'll be a more effective negotiator without really trying.

Mike

P.S. Ever have a used car salesman ask, "Can you afford this car"? Heck no! They ask; "Will this car suit your needs" or "Do you like this one". Once the salesman finds a car you love, figuring out how to pay for it is a different problem that you have a lot of incentive to work on. Do you think car salesmen are taught how to change the outcome by phrasing the problem differently? Hmmmmmmm.

# Creative Negotiation (part 2)

December 2003

Great buyers negotiate more than just the price. They consider each contracting action an opportunity to be creative. They understand that reducing contracting cost is only one way to be successful. By negotiating an increase in contract value or reduction of risk, effective negotiators can save even more bottom line cost.

Even if price is not on the table, there are dozens of other issues that can affect the success of a contract and can be of direct value to the buyer. In Creative Negotiating part 1 we talked about reducing risk by addressing performance concerns in the negotiation. There are many more ways to improve the value of the contract.

Consider packaging for example. Most of us have negotiated special packaging for one reason or another. It might be smaller lots so the unused portion isn't wasted, environmentally friendly packing or unique labeling to simplify handling. In comparison to a potential 5% reduction in price the net reduction in cost to handle, dispose waste or store the product may be much greater value to the buyer. A buyer who only focused on getting the 5% reduction, might be losing money on the purchase.

Just in time delivery is another great example of how buyers can apply this principle to just one aspect of a contract and achieve significant savings. Even if it adds a little more to the price, the cost avoidance for storage and handling makes it worthwhile.

So what's the point?

When it is time to negotiate a new contract, be it office supplies or technical services, increase your effectiveness by including more than just the price. Consider the full impact of the contract on your company when planning the negotiation. Here are some suggestions.

1. Start by learning everything you can about what you are buying and what it's for. Also learn how it's received, handled, stored, dispensed and used. I once discovered by accident that special seals we received in packages of 3 were being used in lots of 10 with the extra two being discarded. Not so funny was the fact that the supplier was packaging them specially for us in lots of 3. That's the way we used to need them and no one had ever updated the traveling requisition. By switching to the standard package of 5.... you know the rest... the company saved millions and I was promoted to president. [Well almost, but you get the point].
2. Keep a checklist handy of contracting issues to consider negotiating. Review the list before each purchase to find applicable subjects to include in the solicitation and/or discuss with the contractor. Reviewing the list before each contract will help you remember everything and might spark some thoughts about items to include that have never been included before.
3. IMPORTANT NOTE to new buyers. Assume everything is negotiable until the contractor convinces you otherwise.
4. Don't negotiate with yourself! If you don't ask because you think you know the answer, then you lose automatically. Without asking you will never know.
5. Spend some time brainstorming optional ways to handle major contracting elements with friends. Ask some pointed questions and explore options.
  - a. Is this process necessary?
  - b. What purpose does it accomplish?
  - c. What alternatives do we have to accomplish the same purpose?

Example: The invoicing and payment process certainly is a necessary, time consuming and costly part of each contract, right? Not necessarily so....Here are a few alternatives that might be applicable of useful depending on what you are purchasing:

1. Just send the contractor a check with the purchase order. The contractor ships and cashes the check. No invoice process at all. [Don't laugh, companies have been doing this for small value items for many years]
2. Set up a blanket contract and pay for each release using a Purchasing Card
3. Set up a blanket contract with one invoice a month for all of the various releases or shipments during the month.
4. Make automatic payments of a fixed amount for six months, and then adjust the payment amount for the next six months based on actual usage. Electrical companies do this for consumers. Consider it for your maintenance or office supply contractor where usage is continuous and relatively stable.
5. Pay the purchase order amount on receipt without any invoice at all.
6. Require contractors to submit invoices electronically (no mail or paper to handle)
7. Pay by using Electronic Funds Transfer (no check to write)
8. Barter. Trade for items or products that you can supply. It might even be surplus to you. An example might be machine tools that are obsolete in our environment but that the contractor can sell in foreign markets.
9. Read a previous article on this topic; [It Ain't Over Until its Paid](#)

Once you have the list of options developed, talk with the contractor about payment terms. Several of these methods significantly reduce invoicing cost for the contractor, which should be worth a lot of concession or extra value in the contract.

Note to new buyers: A concession isn't always price. A contractor's cost to produce an item isn't the retail price charged. So a contractor can often afford to give an extra item much more easily than giving you a discount or refund. [remind me and I'll talk about this principle in a future newsletter...]

Here is another example:

When an office supply contractor receives a purchase order for office supplies, the first thing they usually have to do is keypunch it into their computer system. This adds time, cost and potential errors. If, on the other hand, we place an ordering using a contractor's online ordering system, the information is already entered in the contractor's computer and doesn't have to be entered again. The contractor saves significant cost, which can be leveraged in the contracting process. The contractor could use that savings to program a custom web site just for the buyer.

Invoicing and payment is only one element in a contract. Review the negotiation checklist and I'm sure you will find many more to consider. Check off the items that could apply, then see how creative you can be at reducing the cost. Don't forget that including a new item to reduce risk or increase the value of the contract to your company is also an important option. This would be a great exercise at an ISM program:

1. Place one contracting issue on a flip chart.
2. Ask each table to discuss ways to be creative, eliminate or improve the value of the process
3. List ways that including this item can reduce risk or improve the value of the contract to your company
4. Share the ideas on the flip chart for everyone to see and take back to work.

I'm not talking about a huge negotiation stage production with 6 lawyers and two accountants; I'm talking about the day-to-day discussions that happen between buyers and sellers, where most contracts are created. It's not

rocket science, it's making constructive use of the every-day skepticism that buyers develop when contracts go wrong because they forgot to ask, "what if...?"

Just consider the options, ask the questions and make each contract the best it can be. Next thing you know, you'll have a reputation as a great negotiator.

Here is a link to download a previous PowerPoint workshop on [Creative Contracting](#). It's a big file... right click and select SAVE AS to save to your hard drive.

Read more articles about negotiation and creative contract solutions in the Purchasing Toolbox at <http://www.mltweb.com/prof/tools.htm> and in the BuyTrain news article archive at <http://www.mltweb.com/tools/buytrain/index.htm>

# Creative Negotiation (part1)

November 2003

In a recent article we talked about the problems [evaluating supplier performance](#). Of course we want to consider a supplier's past performance... but there are issues. One of the key questions becomes; "what the heck can we do about it?"

All too often, we end up using a supplier despite performance concerns. If we have to use them anyhow, then I suggest addressing past performance when developing a negotiation plan.

Experienced buyers understand that every contract is negotiated. They [ask probing questions](#), and discuss all aspects of the proposed contract with the supplier. These buyers understand that [every discussion](#) with a supplier is a negotiation with the purpose of reaching the best possible agreement.

Try thinking of it this way:

The buyer and the supplier are negotiation partners and a poorly formed or incomplete contract is the enemy.

Great buyers realize there is much more to a contract than just the price. They consider possible outcomes, problems and concerns, then address them when negotiating a contract. Even if price is not on the table, there are dozens of other [issues that can affect the success](#) of a contract and can be of direct value.

I'm not talking about a huge negotiation stage production with 6 lawyers and two accountants; I'm talking about the day-to-day discussions that happen between buyers and sellers, where most contracts are created. It's not rocket science, it's making constructive use of the every-day skepticism that buyers develop when contracts go wrong because they forgot to ask, "what if....?"

Example:

- When you and the supplier reach an agreement on a suitable shipping method, you just negotiated.
- When you and the supplier reach an agreement for special packaging, you just negotiated.
- When you and the supplier reach an agreement on multiple shipments, you just negotiated.

[Sounds like a favorite stand-up comic routine. "You know you're a real buyer, when..."]

Effective buyers also realize that every factor not discussed before award is an opportunity lost. Before starting the contracting process, they develop a comprehensive list of contract elements, issues, factors and concerns, to address, discuss and resolve. The bigger the list, the [more complete the agreement](#) and the more chance of success.

The most creative and valuable members of the buying staff go beyond the typical aspects of contract formation and seek [creative ways to make the contract better](#). They consider changing needs, product improvements, alternative solutions and creative ways of improving contracting efficiency.

If performance history is a concern, then include factors in the negotiation that will mitigate and improve performance. I'm talking about including provisions, terms and agreements that will "improve" contractor performance. Sure, you can add a massive late-delivery penalty. But if the contract fails and shuts down production, who cares if there is a discount on the next delivery? [Might be useful while hunting a new job?].

Instead, consider why the delivery might be late, then include contract provisions that will preclude those problems.

Here are some examples:

- Regular production reviews
- Expedited delivery of raw materials, (the buyer may even help obtain the raw materials to make sure they are on time)
- Supplying inspectors or inspection tools
- Assisting in the training of specialized workers
- Negotiate with other customers to take part of an allocation
- Relax or change part of the requirement that impacts performance
- Supply expert assistance for transportation or custom clearance

Also, try asking the supplier to part of the solution. “What can we include or change in this agreement that will help ensure on time delivery?” If the supplier has a history of problems, but still wants the business, then the supplier has a vested interest in finding a way to make the agreement acceptable.

Try asking these questions:

- You have a reputation of performance problems, why should we award the contract to you this time?
- What are the factors that caused performance problems last time?
- The root cause of the delay or failure happened at xxx stage in the contract, what have we done to solve that issue? [Newby buyers learn very quickly that the 2-week shipping delay didn't happen in the shipping department, it was caused weeks earlier in the xxx part of production]
- What have you already done to ensure we don't have that problem again?
- What contract provision can we agree include that will mitigate that problem?

The bottom line:

To create the best possible contract, consider all of the ways to improve it and include them in discussions with the supplier before award. Don't get hung up thinking that negotiation is a major exercise. It doesn't have to be.

Start at the beginning:

- Consider, discuss and resolve all [possible contract issues](#)
- [Ask probing questions](#)
- [Focus on the issues not the people.](#)
- Seek problem resolutions in advance not penalties after the fact.

With practice you'll become an effective and creative negotiator.

Read more articles about negotiation and creative contract solutions in the Purchasing Toolbox at <http://www.mltweb.com/prof/tools.htm> and in the BuyTrain news article archive at <http://www.mltweb.com/tools/buytrain/index.htm>

## Don't Be Afraid To Negotiate

Have you ever been in the position where you felt a little guilty about starting a negotiation? Did you ever decide to be a "nice-person" and not attempt to negotiate more favorable terms or pricing? WHY! WHY! WHY! Certainly I would feel a little remorse if I was dishonest about my intentions or if I misrepresented the facts in a situation. However, isn't it your job to be sure that you are getting the most favorable arrangements for your company? Do you think that the well trained, cigar smoking, expensive dressing salesperson doesn't know that? What about the companies sending out only the young and innocent salespeople with loads of kid pictures. Do you think that the sales manager didn't have a plan in mind?

You know and I know car salespersons will do everything in their power to get you to pay full (or better) price for the new car. However, the only ones you learn to hate are the salespeople who are dishonest or who do not give you the opportunity to develop a better deal. [Hi I'm honest Mike and I'm here to tell you that you can't find a better deal anywhere!]

As long as you are being fair and honest with the supplier, it doesn't hurt to ask. Explore the situation, examine the facts, review the pricing, ask questions and if you feel its justified, ask for some concessions. The worst that can happen is that the supplier will say ouch [ and mean it]. On the other hand, there could have been a few too many dollars in the original price. Perhaps there is a discount available that no-one has thought to include. Without asking you'll never know.

## Leading Questions

Ask the right question when you negotiate. Sounds simple, doesn't it? But you would be surprised at how often the wrong question is asked. No, not necessarily the wrong question but asked the wrong way.

Take for example the question; "When did you stop accepting bribes?" Kind of a difficult question to answer, without getting into trouble, isn't it? There is no easy or safe answer.

Would the impact be the same if the question were asked this way; "Do you accept bribes?" Of course not! We may be talking about the same subject but, in the first question, we have made it much more difficult for the other person to give us an answer.

By the way we have worded the first question we have already made an implication about the person and required a lengthy explanation. The implication now has more validity and must be carefully defended when the question is answered.

In negotiating, don't let the other person have the easy way out. Be careful about the implications you put into your questions. They can work against you as well as for you. Make the other person give you the difficult answer and perhaps more information.

Consider the following questions: "How much of a price increase will there be next year?" "When will the price increase go into effect?" In both cases, we have made several important implications that make it hard on ourselves and easier on the Seller. We have implied that we know there will be a price increase, that we expect it to affect our order and that we are prepared to incorporate it into our planning now.

How about if we re-worded the questions slightly? "Do you expect to ask for a price increase next year?" "How long can you maintain the current pricing?" "How long before we have to re-negotiate the contract?" "How long before you can start reducing the price?" "How long before I have to re-bid the contract?"

By changing the wording of the question, we have placed much more of a burden on the Seller and put ourselves into a better negotiating position. In the extreme case, we have implied that we will re-open the bidding should the Seller dare to ask for an increase. In any event, the Seller may now make an (erroneous?) assumption about our plans and be much more careful about what he says.

A lawyer friend (oxymoron?) once explained that lawyers are trained not to ask a question in court unless they already know the answer. That is, they make sure the question has a purpose other than to do the fact finding that should have been done long before getting to court. Perry Mason was my favorite example of this. He asked the question at the right time and in the right way to force a confession.

Can we ask purchasing questions, in the right way and at the right time? Even if we can't always know the answer up front, I think we can ask the right questions.

Consider the following bad examples. See if you can spot all of the assumptions and implications; then find a better way to word the question.

"How much of an expediting charge will it take to..."

"How much will the delivery be delayed?"

"How much time do you need to prepare your proposal?"

"How many defects per shipment should we expect?"

"What is the restocking charge?"

All too often, we rush into the fact finding and discussion stages of negotiating. We know the information needed, but we have not given any thought about how to ask the question. By changing the way we word questions, we can have a powerful negotiating lever on our side and be more effective.

Note: One more tip: Plan better ways to ask common questions and prepare yourself a written cheat-sheet to keep at your desk. You'll be prepared for the last minute phone calls. This might be a fun and valuable exercise to do as a group.

## Negotiate the "Full Meal Deal"

The less expensive pump isn't, if you have to airfreight the late shipment. The circuit boards aren't cost effective if you have a 30% scrap rate. The new crane might cost more to ship from Japan, than the sticker price alone. These are all lessons we learn in life starting at an early age with " the loaf of bread on sale isn't a good deal if you have to drive across town to get it".

Inexperienced buyers sometimes make the mistake of starting each new contract negotiation by focusing on a lower price? Starting this way can sometimes sour the rest of the negotiation and/or distract you from looking at other important aspects of the agreement. If the selling price is part of an established rate structure then the salesman might become defensive or argumentative and the resulting discussion will be less than congenial. And of course, the obvious potential problem; "It wouldn't be the first time everyone was so happy the price was settled, that another important element of the transaction was completely forgotten."

An alternate strategy might be to leave the obvious discussion about price until last. Talk about all of the other aspects of the transaction which have to be "right" in order for the price to be a good one. Take advantage of the elements where the salesman might have some flexibility or be creative. Work on making the deal the best you can, then talk about price.

Now that both parties completely understand all the aspects of the agreement, the pricing discussion can be based on concrete facts such as who pays the freight; does there really need to be special packaging, delivery schedule, etc. There are a lot of contractual elements to consider negotiating, and it is a good idea to use a checklist so you don't forget any. You can find a list of issues to consider including in a contract negotiation at <http://www.mltweb.com/tools/what.htm>

# The Whole is sometimes greater than the Parts

Experienced negotiators guide the negotiation to focus on aspects of the transaction which are most important to them. Astute negotiators also understand that in some cases, there isn't any one element that is more important than the agreement as a whole. This gestalt negotiating strategy increases flexibility and decreases the adversarial role of the negotiators.

In planning for a negotiation, we learn that there are many elements of the agreement to consider. Price is not the only element of an agreement that should be negotiated. At times there are many dozens of elements that should be considered and negotiated. However, once the talking starts it's easy to get locked into just one or two details and lose sight of the bigger picture. Details such as the negotiator's attitude, high price, slow delivery or poor quality can trigger an emotional response and cloud our judgement.

We all understand that the long term cost of ownership, delivery, service and support are critical issues, and should be considered in a major purchase. But have you ever walked away from a deal based on the salesman being condescending, or because the price isn't what you expected; and later wished that you had struck with it instead of having to start over? In this situation, if the detail is wrong, it's easy to forget the rest of the elements, stop the discussion too quickly and end up with no agreement at all.

Consider also the effect of a detailed-focused negotiation on the participants. If I tell the negotiator that the price is too high, it generates a defensive response pertaining only to the price. This can happen with any specific element of the negotiation. The more times I tell the negotiator, "the price is wrong, the delivery is wrong, the quality is wrong, etc." the more the negotiator will become defensive. We can both become frustrated and never get past this roadblock.

However, if we avoid getting lost in the details, then the negotiator doesn't have to immediately respond to a specific issue and can be flexible in offering alternative concessions in other elements of the agreement. Sure pricing may be the immediate issue (and it may be too high) but the negotiator in this case now has the flexibility to be creative about solving the "whole deal" problem. They can bring in other issues to offset the price problem, long term cost of ownership, financing, rebates for future order, discounts for service, etc.. By extending the discussion we give the negotiator some flexibility and we give ourselves a chance to re-think our position and realize the total cost of ownership is more important than just price.

By characterizing the negotiation in this form "I will issue the purchase order when the whole deal is the best" we avoid making the negotiator defensive about any one particular issue. We will work together to find the optimum solution. Lack of an agreement indicates that the discussion is incomplete, and we both are encouraged to keep searching for a "better" solution. We have also given a negotiator who has room to make a concession, but doesn't want to seem to be too easy, a way to insert the price reduction at a later time in a face saving way.

Here is another example.

I can't start negotiating without knowing my delivery needs. However, once the talking starts, the delivery detail becomes a piece of the whole agreement. After talking about it, I might decide that I can accept a few extra days for delivery time in exchange for packaging which better meets my user's needs. This is a better deal for my company, than I wouldn't have achieved if I had walked away from the negotiation when the supplier said he couldn't meet my delivery requirement. Examination of the whole agreement, revealed opportunities for creativity that made the deal work. We let each detail or element flex depending on its interaction with the other parts of the agreement

It is still critically important to consider all the various elements of an agreement when preparing for a negotiation. The person who fails to plan, plans to fail. Of course at some point, all that can be said, has been said and you have to give up. But, by setting the negotiation goal of finding the "best overall agreement" I have given the process the best opportunity for success.

SAB's top ten reasons to become a better negotiator

1. Improve personal and professional profitability.
2. Achieve desired outcomes and create synergy while fostering relationships.
3. Maximize financial returns and value in negotiations.
4. Avoid being cheated.
5. Neutralize difficult negotiators and their tactics.
6. Enter into and conduct negotiations with confidence.
7. Know when and how to walk away from a negotiation.
8. Improve personal relationships with colleagues, clients and loved ones.
9. Build leadership and team building skills.
10. Turn cultural differences into assets rather than liabilities.

QUESTION #5(15 points)

You have been asked to mediate between two parties seeking to reach an agreement on a matter of great importance to them. Each party has its own set of demands which appear incompatible with the demands of the other party. Is a solution possible? If so, how would you go about finding one?

- a. Let each party know that they are far from coming to an agreement and ask them to make any concessions they feel are reasonable to the other party.
- b. Suggest concessions to each party and attempt to convince each party of the reasonableness of agreeing to the concessions.
- c. Ignore their initial sets of demands and ask each party what they are hoping to attain in the agreement and come up with an agreement of your own.
- d. Declare to both sides that you think an agreement is impossible unless they both commit to being more reasonable.
- e. None of the above.

>Hello Mike

Thank you for your interest in our product.

We have no difficulty in you providing a link to our site on your site.

In answer to your two questions:

1. No, membership is not free. There will be free trial memberships that will allow people to play a couple of games for free. Thereafter, individuals can enroll as annual members or casual members. Annual membership allow you to play an unlimited number of games in a year and will cost about \$US60. Casual Membership allows you to pay per game played and will cost about \$US5 per game.

2. The corporate training site does not have training materials, other than short summaries of different approaches to negotiating. Our site is a tool that is designed to augment existing course materials.

The corporate training site allows anyone to open an account for their organization. This is free. Thereafter, you pay only when people are enrolled as members to play games. Again, students are enrolled as either annual or casual members. The costs for this are double the costs outlined above for individuals. This is because the corporate site contains more features and provides more comparative data on how your students have performed against the rest of the world.

We have almost finished the development of the site. The individual side of the site will be available to the public within the next two weeks. Trial versions of the corporate training site will be available at about the same time. If you would like to receive an email notification of this, just register your details on our website.

Finally, you might be interested in two programs we have developed for trainers and educators. First, we intend to license scenarios from existing trainers and educators. If you have particular scenarios you use, we can include them on our site. You will be able to use them in your training and also earn a share of our revenue if others use your scenario.

Second, we will provide accounts to trainers and educators at the wholesale rate, (\$US60 per annual membership/\$US5 per game). This recognizes that in using our product in their courses, trainers and educators are effectively distributors. What you charge your clients is a matter for you. You can keep or pass on this discount to corporate clients, or charge a premium.

If you require any further information, please let us know.

Regards

Machiavelli's Workshop

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## Negotiating Fear

by Dr. Chester L. Karrass <http://www.karrass.com/html/site.htm>

Never fear to negotiate, no matter how great the differences are. It is impossible for both parties to recognize where and how an agreement can be made without undertaking the process of negotiating. The final outcome only becomes apparent after extended discussions.

Fear can create enormous pressure on you and impact your negotiating success.

Never get panicked into a final agreement by a time deadline. It is easy to fall into the time trap. Be skeptical about deadlines. Most of them are negotiable.

If you make an error in coming to an agreement, don't be afraid to admit it. Maybe it is an error in judgment or a mistake on some fact or statistic. Whatever it is, it can impact your final agreement. Deal with errors promptly. Admitting such mistakes takes courage, but immediate corrections are essential a satisfying agreement.

Remember, negotiation is not a contest. Don't shy away from negotiating just because you are afraid of making a mistake or doing poorly. With a little effort, and good negotiating skills, a better agreement can be found for both parties at the same time.

When you attended our Effective Negotiating Seminar, we helped you identify and experience many aspects of negotiating. We provided you the tools to gain a better understanding of the process, what to look for, what to watch out for and how to take control of the negotiating process. Use these tools. They will help reduce fear and make you feel more comfortable in your negotiations.