

A Basic Introduction to Contract Negotiation for State Agency Purchasing and Program Staff

*Prepared by The State Bureau of Procurement
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1. Introduction

The Wisconsin State Bureau of Procurement has prepared this information as a basic introduction to negotiation. What is presented in this document will not answer every question or address every situation in negotiation. We are offering a very basic introduction to a complicated subject. These are ideas to think about before you negotiate. We have included a wide range of ideas and additional resources. We invite you to consider some or all of the ideas and suggestions in this document and in the Negotiation Guidelines. Good luck and good negotiating!

2. Definitions

Contract Renewal: The process of exercising an option contained in the original procurement to continue the contract.

Contract Review: The process of the periodic review of a contract to monitor and/or measure a vendor's performance and/or the contracts continued appropriateness.

Negotiation: An interactive process between two or more parties seeking to find common ground on an issue or issues of mutual interest.

New Solicitation: The competitive process used to communicate procurement requirements and to request responses from interested vendors.

Project Manager: The individual in charge of: the progress and performance of a project, managing a project work plan, and coordinating project resources in order to achieve specific objectives.

3. What is Negotiation?

- Creating a win-win situation
- Communicating goals and objectives
- Compromising so that each side wins

Negotiation is two or more people trying to convince the other to accept their wants and points of view. It is an interactive and dynamic process. If you are successful the parties reach agreement.

Negotiation is competitive with each party working to get what they want. When staff shares information with a vendor, that information may be used again in a negotiation. Vendors will try to get information from everyone in your agency they can reach. You need to make program staff aware when negotiations are in process and that they should not share any

information, outside of what is needed for the day to day operation of the contract, with any vendor.

4. Who does the Negotiating?

Best practices for successful negotiation involve teams. It is critical to have the primary stakeholders (legal, procurement, and the program area) involved in the planning of the negotiation and the negotiation itself. It is neither recommended, nor wise, to negotiate by yourself.

5. When and what can we Negotiate?

Negotiations may occur at any time within the contract however, there are three optimum opportunities for us to negotiate a more favorable position for the State because both parties have the incentive to reach an agreement. Each of these opportunities has dynamics and situations specific to them. These opportunities are:

- a. During Development of a Contract as a result of a Solicitation*
- b. At the Point of Contract Renewal*
- c. During Contract Review*

a. Development of a Contract as a result of a Solicitation

This opportunity, at the point of concluding a new solicitation, affords the State the greatest point of power and the most leverage. During contract development we can negotiate deliverables, time frames, performance measures, liquidated damages, pricing, etc. It is worth noting that it is critical to have the primary stakeholders (legal, procurement, and the program area) involved in the definition of the structure of the original contract.

b. Contract Renewal

The renewal of a contract gives us maximum opportunity to evaluate the vendor's performance to date, evaluate the success or failure of the contract, and resolve issues. At this point, there is a mutual opportunity to discuss services, deliverables, responsibilities, and pricing.

c. Contract Review

As part of on-going Contract Administration, contracts should be reviewed on a regular basis. A contract review could also be precipitated by budget, vendor performance, program needs, or other circumstances that impact on existing Terms and Conditions.

6. The Benefits and Disadvantages of Negotiation

There are many obvious benefits to negotiation: lower pricing, improved service, clearer deliverables, and better terms. Negotiation also gives us the opportunity to address issues or problems, establish new or improve existing communications, maintain services or deliverables, and improve the way we manage our vendor relationships, contracts, and operations.

However, it is important to remember that negotiation is not without risk. You need to prepare for all situations including re-bidding. If you successfully negotiate a price decrease, you may lose services. In a worst case scenario, the vendor can walk away or choose not to accept or renew the contract.

7. Simplified Process of Negotiation

a. *Prepare*

Preparation and planning are essential to successful negotiation. Determine what you want, what are you willing to give up, what you are not willing to give up, research the market and the vendor(s), estimate what the vendor(s) want, and what they might be willing to give up. Planning is critical and knowledge is power.

b. *Meet*

Discussion – Confirm what the vendor(s) wants and their potential areas of compromise (get the vendor to put their cards on the table first).

Proposal/Offer – Present what you are willing to consider trading/potential areas compromise.

Bargain and Close – Determine what you will trade/final areas of compromise.

c. *Complete*

- Finalize the written Contract/Agreement – Include the negotiated deliverables, benchmarks, performance measures, etc.

- Walk Away – The Last Resort

It is important to have a plan in place if you are unable to reach agreement. All stakeholders must be in agreement prior to the walk away and the plan to meet program needs must be ready to implement.

8. Joe Auer's 10 Keys to Successful Negotiations ¹

For the past thirty-four years, Mr. Auer has advised and empowered professionals with the techniques and tools to negotiate fair contracts that meet the mutual goals of both user and vendor. Mr. Auer's consulting company, ICN, numbers among its clients more than 300 of the Fortune 500. Both the State of Wisconsin and the UW System are members of ICN's CAUCUS, an association serving technology procurement professionals.

Integrity – You are negotiating a relationship. Get what you want honestly and fairly.

Information – Whoever has the most information has the most power. Your goal is to minimize the information the vendor gets and to maximize the information you get from and about the vendor.

Authority – Don't accept "no" from someone without the authority to say "yes". High-level people can give away more. Be sure to verify your authority before negotiating.

¹ Joe Auer is founder and president of ICN

Attitude – Today, most everything is negotiable. Adapting your attitude to reflect this thought empowers you to ask.

Alternatives – Alternative choices bring you power, the more choices you have, the more power you have.

Process – Think of negotiations as an ongoing process, not a singular event.

Ask! Ask! Ask! – Don't ask the vendor for unreasonable things; ask for an unreasonable number of reasonable things.

Power – All interaction is about power. The amount of power equals the amount of success. Historically, vendors do well, customers don't. Don't give away power by giving away information. Remember, vendors may have access to many individuals across your agency and they pay attention to what everyone says. To the vendor, that is all part of negotiation.

Incentive – Inspire negotiators and users to do more than come in under budget. When setting goals, be sure to include more than just dollars. Improvements in service or other value added opportunities can be just as important.

Experience – Write good contracts. Negotiate well. The more often you do the better you get.

9. Final Thoughts on Negotiation

- Preparation is critical
- You might refer to a budget but you never tell what the budget actually is
- Listen carefully
- Silence is powerful
- Ask questions that allow you to gather more information
- Keep the negotiation factual, non-emotional, and non-personal
- Non-verbal communication can give away your position
- Be clear and consistent in your position
- Consider impact of Team membership positions
- Limit the interaction of program staff with the vendor during the negotiation process – Vendors are very good at mining for information
- Consider the negotiation as on-going – maintain communications with regular meetings through the life of the contract

10. Resources

Negotiations Guidelines
Negotiations Guidelines Flowchart

(To be added)

Negotiation Guidelines March 2010

Negotiation is a highly visible activity. It contains an infinite number of variables and potential pitfalls as well as opportunities for success. Negotiation can be done on small or large contracts, high or low dollar amounts, on projects that employ a significant number of contracted staff, on projects that have a high level of risk or sensitivity, and with new or long standing vendors. Negotiation requires commitment, planning, and effective communications. The following information provides you with an overview of the key players, tasks, and activities associated with complex negotiations. The “Negotiation Guidelines” is intended to be used in conjunction with “A Basic Introduction to Contract Negotiation”. The tasks and roles will vary according to the complexity of the negotiation activity.

Task	Considerations
Project Manager Determined	Assign an individual or take the lead (Project Manager) to develop the process to negotiate or re-negotiate a contract. This might be management, the procurement lead, program staff, or another individual.
Duties of Project Manager	The Project Manager (PM) will usually: <ul style="list-style-type: none"> - Create the work plan - Establish timelines - Manage the work plan - Identify resources (Team Members)
Establish Team	
Team Composition	Choose a negotiating and a strategic plan development team. These teams may or may not be composed of the same individuals but care should be taken to ensure that some individuals are on both teams.
Considerations Common to both Teams	Choose team members based on need and/or skill sets specific to the vendor, the commodity, or the negotiation. You should consider team members representing procurement, program, end users, legal, technical experts, finance, management, or others.
	Teams may vary from one situation to the next. It is important to always develop the strongest team possible.
	Identify the team leader and decide who speaks for the team, who records meetings, what other roles are needed and who will fill them
	Determine what outside resources the team might need, who contacts these individuals, and how the communications are handled.
Project Review	(Prior to beginning the Negotiation)
Collect and Review Contract Information	Collect and review the contract and all relevant and related documents necessary to understand the purpose and scope of the contract, technical and performance requirements, and specific

Task	Considerations
	issues related to the contract negotiation. At a minimum, review the original solicitation (RFB or RFP), the vendor's response (if available), and the current contract document. Other relevant items may include written correspondence or e-mails regarding disputed issues, failure to perform, satisfaction surveys, or written complaints from end users.
	Analyze past successes and failures and their relevance to the current situation. Learn from what has happened before and what is happening now.
	Ensure that the contract administrator and/or manager reports what has worked, what is working well, identifies any problems, what might be causing the problems, and what could be done differently to address these issues.
Develop Strategic Plan	
Review Scope of Project / Contract	Become familiar with the scope of the current contract or project. In negotiating, you can not go outside of or expand the scope of the solicitation or the existing contract.
Identify Goals and/or Objectives	Determine what you want and need to accomplish. Make a list of all the potential goals from each team member or relevant stakeholder e.g. program, financial, or technical staff, etc. Goals could be potential solutions to identified problems or they could be designed to meet the project's requirements. Goals should be expressed as broad solutions that the negotiation is expected to achieve. Objectives should be expressed as specific outcomes.
Prioritize Goals and Objectives	Prioritize goals and objectives and rank according to relative importance knowing that some are more important than others. Rankings can be based on the particular needs of the user group, the past performance of the vendor, or the risk and cost factors involved in any failure of performance.
	By prioritizing, team members gain an understanding of all issues prior to the negotiation and it is less likely that an important point will be given away at the negotiating table. Prioritizing also keeps team members on track because important issues have already been resolved.
Identify Potential Areas of Compromise	Prioritizing also helps determine which goals and/or objectives can be traded or given to the vendor since the relative importance of each is known. It is important to have these areas of compromise to create the win-win situation. You must also identify what you will walk away from.
Gaining leverage through research	Determine how valuable the vendor is to you versus how valuable you are to the vendor. Leverage and power are derived from knowledge and information.
	Know your past and current spend with the vendor on the products or services included in the negotiation. How much

Task	Considerations
	money you spend and what per cent of the vendor's sales you control will be a determining factor in your importance to the vendor.
	Being able to forecast your current and future needs and knowing the options you have in fulfilling those needs will influence the amount of leverage you have.
	You must know the market. What is the vendor's position in the marketplace? Who are their competitors? What substitutes exist for their products? What is the future for their products? How satisfied are the current end users and what issues/problems do they have?
	If you are negotiating with an incumbent vendor, make sure you know how difficult, costly, and time sensitive the transition to a new vendor would be. The vendor knows the elements of the transition and can use it as a leverage point in the negotiation.
	What hot buttons can you push with the vendor? What do they want, besides money i.e. a better year end or quarterly financial report, a reference account, breaking into a new product line, etc.
Understanding the Vendor's Negotiating Strategy	Based on your research, what do you think the vendor's goals and objectives are. Prioritize their goals and objectives and compare to yours to identify easy compromises and potential problem areas.
	Require the vendor to provide the names of each person on their negotiating team, their positions, and who will make the decisions for them. Learn as much as you can about each individual, their position with the company and any successes or failures they may have had.
	Determine if there are issues the vendor may be trying not to disclose: a loss of business due to the economy, poor financial situation, problems in another state or Agency, etc.
Information Sharing	
Knowledge Transfer	Prior to the negotiation, the Strategy and Negotiating Teams meet. The Strategy Team presents all the information, goals, objectives, market research, spend, vendor information, all other information, and any other information or recommendations to the Negotiating Team. This knowledge transfer is critical to the success of the Negotiation. It is the responsibility of the Strategy Team to ensure that the Negotiation Team has all the necessary information. The transfer of information can be verbal, written, or a combination of both.
Negotiation Protocols	
	Before starting a negotiation for a new contract, determine which contract is the starting point. It is best to start with ours and not

Task	Considerations
	the vendors. In all other cases, start with the existing contract.
	Limit the number of people on your team. The vendor may perceive a large negotiating team as a weakness, that no one individual on your team knows or understands the issue, and your negotiating position will not be as strong.
Team Operations	Set the ground rules for how the Team operates. Determine, in advance: <ul style="list-style-type: none"> - Who makes the decisions - Who speaks for the Team during the Negotiation - Which team member records the activities and reports to the Team - Which team member actively listens and observes non-verbal communications - How the team communicates during the negotiation - How and when to walk away
Gaining Leverage	<ul style="list-style-type: none"> - Schedule meetings to your advantage, location, time, etc. - Set the negotiation schedule - Determine how to excuse your team during the negotiation for discussion or to make a point - Determine when the negotiation must be temporarily suspended - Determine when you will be willing to terminate the negotiation (but fully understand the consequences) - Understand the power of silence – silence often makes people uncomfortable. You can use silence to try and force the other side to give in
Finalizing the Written Agreement / Contract	
	Determine who can decide that the agreement/contract will be put into the approval process.
	Begin the negotiation with one contract, that both sides have and have been given time to review, and end the negotiation with the contract that creates a win-win for both parties.
	Begin the negotiation with the State's T's & C's and only compromise on those that have been approved by Legal.
	Be sure that objective benchmarks and performance measures are included in the contract to ensure that negotiated terms are being met. Define the consequences of non-performance.
	Define who and how negotiated changes will be folded into the new document.
	Determine who will prepare the agreement/contract for presentation for approval.

Negotiation Guidelines Flow Chart

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