

Negotiation

Office of the Chief Advisor - Procurement

This document will be progressively reviewed as part of Buy Queensland 2023 implementation.



Negotiation

v1.1. November 2018

The State of Queensland (Department of Housing and Public Works) 2018



<http://creativecommons.org/licenses/by/4.0/deed.en>

This work is licensed under a Creative Commons Attribution 4.0 Australia Licence. You are free to copy, communicate and adapt this work, as long as you attribute by citing 'Negotiation, State of Queensland (Department of Housing and Public Works) 2018'.

Contact us

The Office of the Chief Advisor – Procurement is committed to continuous improvement. If you have any suggestions about how we can improve this guide, or if you have any questions, contact us at betterprocurement@hpw.qld.gov.au.

Disclaimer

This document is intended as a guide only for the internal use and benefit of government agencies. It may not be relied on by any other party. It should be read in conjunction with the Queensland Procurement Policy, your agency's procurement policies and procedures, and any other relevant documents.

The Department of Housing and Public Works disclaims all liability that may arise from the use of this document. This guide should not be used as a substitute for obtaining appropriate probity and legal advice as may be required. In preparing this document, reasonable efforts have been made to use accurate and current information. It should be noted that information may have changed since the publication of this document. Where errors or inaccuracies are brought to the attention of the Department of Housing and Public Works, a reasonable effort will be made to correct them.

Table of Contents

Introduction	5
Purpose of the guide.....	5
How is this guide to be used?	5
How does the Queensland Procurement Policy link to this guide?	5
Negotiation in government procurement.....	5
What is negotiation?	5
Why negotiate?	5
When to negotiate?	6
What can be negotiated?	7
Planning and preparing to negotiate.....	7
Understanding the context	7
Knowing what needs to be achieved	8
The negotiating team	8
Balance of power in the negotiation	8
Power	8
Time	9
Information	9
The concept of the Best Alternative To a Negotiated Agreement (BATNA)	10
Negotiating styles	10
Competition	11
Accommodation	11
Avoidance	12
Compromise	12
Collaboration	12
Conducting the negotiation – key techniques for successful negotiation.....	13
Opening	14
Exploring issues and inventing options	14
Making offers	14
Offering concessions	15
Reaching closure	16
Documentation	17
Contracts	17

Minutes and records	17
When things don't go according to plan	17
Breaking deadlocks	17
Deciding to walk away	18
When the other party is unreasonable	19
Focus on your goal	19
Try to see things from their point of view	19
Make it easy for them to say 'yes'	19
Use the BATNA to your advantage	19
Countering tactics	20
What can I read?.....	20

Introduction

This guide is intended only as a starting point to provide an overview of the main issues that need to be considered in negotiating. It is strongly recommended that officers who are involved in negotiations particularly for large expenditure or critical purchases possess the appropriate skills and experience. It is not intended that this guide replace expertise and other valuable resources that are required to produce successful outcomes for agencies.

Purpose of the guide

This guide provides information about the key issues in negotiation in government procurement activities. It also provides practical advice to assist officers perform effectively during negotiations with suppliers.

How is this guide to be used?

This guide should be read in conjunction with the current Queensland Procurement Policy and your department's "Agency purchasing procedures".

How does the Queensland Procurement Policy link to this guide?

Procurement is about forming relationships with suppliers. Like in any relationship, there is often a need for negotiating the best possible outcomes for the parties. This guide is related to the Queensland Procurement Policy principle of driving value for money.

Negotiation in government procurement

What is negotiation?

In a general context, negotiation is a bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern. In a procurement context, it is the process of arriving at an agreement on the conditions of contract, through discussions between buyer and seller.

Effective negotiation should result in a cost effective agreement that is fair, durable, meets the legitimate needs of both parties and improves (or at least does not damage) the relationship between parties.

Hint – Negotiation is not...

When you are negotiating as an officer of the Queensland Government be careful not to get involved in haggling, "horse-trading" or "Dutch auctions". For example: "The XYX Suppliers said I could buy it for \$100 less than you, can you beat that?" It is unethical to discuss the pricing and other conditions of supplier's goods and services with their competitors.

Why negotiate?

There are many valid reasons for negotiating at different stages of the procurement. By far the most important of these is that a negotiated agreement normally results in stronger ownership by the parties than when the arrangements are forced. As a result, a negotiated agreement is more likely to be successful and enduring in operation.

Some of the more common reasons for negotiating in procurement are listed below.

Before a contract is entered into:

- to clarify issues between the parties
- to develop the relationship and deepen understanding between parties
- to improve on the current offer (e.g. price, conditions, service levels)
- where unusual or complex circumstances exist, and these need to be explored by the parties
- when substantial risks are involved in the procurement and parties look to reduce or transfer the risk exposure.

During the operation of a contract:

- when there are concerns over supplier performance, it is preferable to negotiate and solve the problem rather than litigate
- when variations to the contract are contemplated, it will be necessary to negotiate the terms and conditions for the variation
- when unusual or complex circumstances arise, and these need to be explored by the parties.

When to negotiate?

In a competitive offer process, negotiation with potential suppliers should not take place before the offers have been fully evaluated and, as a result of this evaluation, a preferred offeror (or a short-list of offerors) has been identified.

Hint

If there is only one preferred offeror, they should not be told that is the case.

Negotiation may occur at various stages during the procurement process. However, no negotiation should ever be undertaken unless the expected benefits from the negotiation exceed the anticipated costs associated with it.

Typical process stages for negotiation include:

- after selection of a preferred offeror
- before contract signature
- before any contract variation
- whenever any issues arise during the operation of the contract.

Hint

Sometimes it may be necessary to seek clarification of offers before the final selection of the preferred offeror is made. This may be essential to allow you to reach an informed decision on who has provided the best offer and seeking such clarification is perfectly acceptable. However, you must be extremely careful that clarification does not become negotiation (e.g. asking the supplier leading questions).

What can be negotiated?

Price is often perceived as a starting point for many procurement negotiations. However, a skilled negotiator first explores the wider opportunities to improve the overall “value for money” package offered to their agency by negotiating better terms and conditions including such matters as:

- **technical support aspects** - warranties, life-cycle support, maintenance agreements, etc
- **financial aspects** - deposits, payment terms, discounts, payment schedule, travel costs, cancellation penalties etc
- **risk management aspects** - bonds and financial guarantees, insurances, warranties, type of contract used, service standards, liquidated damages clauses etc.
- **management information aspects** - access to information, reporting, documentation, attendance at progress meetings etc
- **government support aspects** - government provided facilities and information, access to government staff etc
- **timeframes** - completion dates, delivery dates, milestone achievement, length of contract etc
- **performance incentives**
- **general matters** including packaging and freight, use of specified personnel, sub-contracting arrangements etc.

After these matters have been negotiated, it would be appropriate to negotiate on price.

Planning and preparing to negotiate

Time invested in planning and preparation before the negotiation will substantially improve the outcomes of any purchasing negotiation. The old cliché of “failing to plan means planning to fail” is particularly appropriate to the negotiating context. Failure to plan properly often leads to unclear objectives for the negotiation, the use of inappropriate negotiating styles or tactics and a sense that a better result could have been achieved.

Most negotiating teams greatly under-estimate the amount of time needed to adequately prepare for, and research the background to, a negotiation.

Hint

Effective negotiation involves adopting a planning strategy that develops answers to the key negotiation questions:

- what is the context in which I must operate?
- what am I trying to achieve?
- what problems am I likely to encounter?

Understanding the context

Negotiation always takes place within a context. Some of the important issues to consider in understanding the context of a negotiation include:

- what is the nature of the procurement you are making in terms of its level of risk, the level of expenditure and the complexity of the good or service that is being procured?

- what is the nature of the supply market - fully competitive, dominated by a few larger suppliers, unsophisticated suppliers, or is there rural and remote issues?
- is this negotiation a one-off or will you need to maintain a long-term relationship with this supplier?
- have you negotiated with this supplier before? What is their typical approach to doing business with the government? What is the state of the existing relationship between the parties?
- are there any particular political or community sensitivities that may arise as a result of this negotiation?
- how skilled and experienced is your negotiating team?
- who has the balance of power in the negotiation?

Knowing what needs to be achieved

Once the context for the procurement negotiation is understood, standard techniques can be applied to planning the negotiation. Knowing what to achieve in the negotiation is essential and this knowledge is helpful in deciding the most appropriate approach to be used for the negotiation. At a minimum, it is necessary to understand the broad goals or desired outcomes of the procurement. When this higher level direction is clearly understood, it is possible to decide on consistent objectives for the negotiation and to develop a negotiation plan. This plan should include details of negotiating team composition, timeframes for the negotiation, negotiation styles to be adopted, strategies, tactics (if any) to be applied, any limits on the negotiators' authority, process requirements etc.

The negotiating team

For significant purchases, a team of negotiators may be appropriate. Consideration should be given to the composition (for example, experts in technical and financial areas, end user). A leader needs to be selected and roles of members need to be established and clarified. These negotiators need to be appropriately trained and skilled. It is recommended that negotiators spend time rehearsing and role-playing the options that are likely to arise. If negotiations with offerors are an ongoing activity in the agency, consider having a number of skilled negotiators who can participate in a team.

Hint

Wide consultation with stakeholders is a must! Actively seeking the views of a full range of interested stakeholders is an effective way to understand the context for your procurement and to make sure that the desired outcomes of all key stakeholders are considered in the negotiation planning stage. You are investing time now in listening to stakeholder views so that you can tailor your approach to suit the circumstances. By consulting widely, you are also gathering support for your planned approach. This makes it much more likely that key stakeholders will more willingly accept the negotiated arrangement you eventually reach with the supplier.

Balance of power in the negotiation

Three crucial variables determine the balance of power when conducting a negotiation. These are power, time and information.

Power

It is important to make a realistic assessment of the power relationship in any procurement negotiation. Sometimes the balance of power will sit with the agency, simply because of the sheer size of government and the large buying power that it represents. Sometimes the balance of power is in the

supplier's favour where the agency is a small customer or a supplier has an actual monopoly, a geographical monopoly or a virtual monopoly position in the market.

Power relationships between agencies and large corporate suppliers tend to be more equal, whilst the balance of power when agencies deal with small-to-medium enterprises (SMEs) tends to favour the agencies. Being the powerful party in a negotiation is, in itself, neither good nor bad, ethical or unethical. However, any market power must not be misused to damage, eliminate or exclude competitors from the market.

Agencies can increase their negotiating power by identifying a number of alternative products/services that could meet their requirements and by having a range of possible suppliers, thus reducing their dependence on buying a particular item from a particular seller.

Hint

You should never enter a negotiation without knowing the alternatives that are open to you.

Time

Most people describe negotiation as if it were an event. This implies that it has a definite start and finish within a fixed time frame. In fact, negotiation is a process not an event and the actual starting point of a negotiation is always long before the start of the formal face-to-face negotiating phase. In the preparation phase it is wise to gather as much information as possible both about the agency's interests and alternatives and the interests and alternatives of the supplier. After the formal negotiating phase has finished and an agreement has been reached it must be documented, formally agreed, implemented and monitored.

Generally, good outcomes in procurement negotiations cannot be achieved in tight time frames. It is worth investing the time that is necessary to explore issues, identify the needs and interests behind expressed positions and develop creative and innovative solutions of mutual benefit to the negotiation.

Time is a valuable commodity in a procurement negotiation. The agency can best use available time to improve its negotiating position substantially by gathering useful information which allows the development of alternatives to the solution being proposed by the supplier with whom the current negotiation is taking place.

Information

Information is at the heart of a negotiation. Adequate attention to gathering information during the preparation phase of a negotiation can significantly enhance the likelihood of a mutually satisfactory agreement being reached during the formal phase of the negotiation. During the formal phase, it can be a common strategy for parties to try to conceal their true interests and priorities. The chance of obtaining accurate information from an experienced negotiator during an adversarial negotiation is quite low. Information is normally easiest to gather during the preparation phase before the formal negotiation begins.

The more information about the other party's financial situation, real priorities, needs, deadlines, costs and organisational pressures, the easier it will be to develop negotiating proposals which address these issues and the stronger the negotiating position will be.

Hint

Getting information for your negotiation does not have to be dull! There are many ways the necessary information can be gathered. Information about suppliers can often be gleaned from the media, libraries, government publications and statistics, product and consumer reports, online services and professional bodies and the supplier themselves. Other interesting sources of information include contact with third parties who are familiar with the other party, including current and previous customers or even competitors of the other party, who may be able to give you an insight into industry issues and prevailing conditions, cost and/or price structures, product availability and design features.

Warning

You should never behave in a manner that is unethical or unfair in your attempts to gather information to use during negotiations. Be aware that the information you receive may not always be complete or accurate and you should always check information to your own satisfaction before relying on it. Be sure to keep good notes as you go, as it will be almost impossible to keep all this information in your head. Written information is easier to share with other members of your negotiating team and your notes can be invaluable during the formal negotiation phase.

The concept of the Best Alternative to a Negotiated Agreement (BATNA)

BATNA stands for the Best Alternative to a Negotiated Agreement and this concept was developed by the Harvard Negotiating Project. Having a well-developed and attractive BATNA is a source of great power in any negotiation. The BATNA can be identified in any negotiation situation by asking the question, 'What will we do if this negotiation is not successful?' Vigorous exploration of the options that might exist outside the current negotiation can tip the balance of power in a negotiation. However, attractive alternatives may not always be immediately obvious. Sometimes it will take time to identify what these alternatives are and more time again to make them attractive. This is almost always time well invested as having a strong alternative improves the ability to negotiate a good deal in the current negotiation.

One of the main reasons for entering into a negotiation is to achieve better results than would be possible without negotiating. The stronger the BATNA, the greater the range of alternative courses of action. The stronger the BATNA, the greater the ability to walk away from an unsatisfactory negotiation. Paradoxically, one of the greatest dangers in a negotiation is being too committed to reaching agreement without sufficient consideration of one's BATNA. If you are unaware of your BATNA, you are in danger of entering into an agreement that you would be better off without. Other uses of the BATNA will be explored later in this guide.

Negotiating styles

Negotiation situations can often be tense. In these circumstances, most people have a tendency to rely on their habitual ways of dealing with conflict and negotiation. All negotiators should try to identify their own naturally preferred styles. It can also be very revealing and useful to identify the preferred styles of the people negotiating on behalf of the supplier. A negotiating style suitable to the needs of the situation should be employed whenever possible. Five styles are outlined below.

Competition

A competitive style is characterised by the desire to win at all costs. It is often described as a 'win-lose' approach, or 'playing hardball'. In this approach, one party seeks to have all of their requirements recognised without giving any reciprocal recognition to the valid needs of the other party.

Competition can be an appropriate approach when:

- quick, decisive action is necessary
- you firmly believe you are right
- you are dealing with someone who will take advantage of non-competitive behaviour (but beware of escalation)
- the issues are important and unpopular actions need to be taken
- other options are not possible.

Potential negative consequences of using a competitive negotiation style include:

- fear of admitting ignorance or uncertainty
- reduced communication and lost opportunity to generate and explore alternative approaches
- being surrounded by "yes" people on your own team, because it is easier to agree than to get into an argument
- damage to relationships with your own team and with the supplier
- no real commitment from the other party which leads to the need to keep 'selling' or policing the agreement during implementation.

Accommodation

Accommodation as a negotiating style is characterised by the desire to please others at the expense of your own interests. This approach is often called 'lose-win negotiation' or 'soft negotiation'. Accommodation is very appropriate when the issues are much more important to the other party and there is an opportunity to build 'credits' for later use on more important issues. This is the principle of making concessions in negotiation.

Other uses for an accommodating approach include:

- when you find out that you are in the wrong
- you want to seem reasonable
- continued competition would only damage the situation or the relationship
- preserving the relationship is especially important
- you want to minimise losses by conceding early.

Potential negative consequences of accommodating includes:

- frustration as own needs are not met
- relinquished best solution
- self-esteem undermined.

Avoidance

Avoidance is where the issues are ignored completely. Avoidance can be an appropriate style when:

- the issues are trivial, and more important issues are pressing
- there is no chance of getting what you want
- there is a need to have time to cool down and regain perspective
- you need more time to gather information
- someone else can handle the issue more effectively than you
- when the issue is a symptom of another, bigger issue.

Potential negative consequences of avoiding are:

- decisions made by default
- unresolved issues which are never addressed
- creative input and improvement prevented
- damage to personal credibility.

Compromise

Compromise is an approach where the parties meet at midpoint. Both parties achieve a moderate but incomplete satisfaction with their agreement – a type of sub-optimal 'win-win'. It is typified by the 'split the difference' tactic in negotiation. Compromise is an appropriate style when:

- issues are not worth the effort to be negotiated in full
- a temporary settlement to a complex issue is needed
- an expedient solution under time pressure is needed
- back-up is needed because collaboration or competition is not working.

Potential negative consequences of compromising include:

- no one is fully satisfied with the agreement and this leads to short lived agreements which require excessive management or policing
- perception of a sell out on important issues
- losing sight of the bigger issues, principles long term objectives, etc., by focusing exclusively on the practicalities.

Collaboration

Collaboration is characterised by a desire to satisfy all interests in a 'win-win' solution. Collaboration is appropriate when:

- finding a long lasting or creative solution is required
- both sets of interests are too important to be compromised
- reaching a consensus is required
- developing and maintaining a relationship with the supplier is wanted

- there is a need to learn – to test assumptions or better understand the views of others.

Potential negative consequences of collaborating are:

- it is very time consuming to reach agreement
- too much time can be spent on insignificant issues
- unfounded assumptions about trust can lead to the other party taking advantage of your position
- ineffective decisions as a result of including input from too many people.

Preparation checklist

The short checklist below should be adapted to suit your workplace. If you have covered everything on this checklist, then you will have completed a thorough preparation and planning process for your negotiation.

Have you:

- formed a team (if appropriate), specified roles, rehearsed?
- thought about your own position and underlying interests in the forthcoming negotiation process?
- sought input and advice from key stakeholders?
- thought about the possible positions and underlying interests of the supplier?
- developed some possible outline proposals which consider the needs and interests of both parties to use to start the negotiation rolling?
- developed a bottom line and some desirable targets for the negotiation? These may shift during the course of the negotiation
- identified your BATNA?
- determined whether there is any deadline on when a decision must be reached?
- considered where the negotiation will be held – office, conference room, your facility, the supplier's premises, or on neutral ground?
- considered the seating arrangements and the impression that you may create by your choice of seating layout?
- developed a plan for dealing with interruptions?
- provided private meeting space for the other party's use (refreshments, telephone, fax and photocopier access)?
- set an agenda for the first meeting after consultation with the supplier?
- prepared personally – are you well rested and alert, well briefed, confident and informed on the issues, dressed appropriately?

Conducting the negotiation – key techniques for successful negotiation

Key techniques for successful negotiation together with practical hints for each stage of the negotiation process are provided below.

Opening

It is desirable to establish control and set the tone from the opening moment of the negotiation.

Hint

It is important to enter the room confidently and to exchange pleasantries in a relaxed and confident manner. Turn off your mobile phone. Have your right hand free for shaking hands and your business cards ready to exchange. Think about seating arrangements. Remember, you are aiming to start the negotiations off in a positive climate.

Exploring issues and inventing options

This is the stage where the parties form an understanding of each other's positions and the interests behind those positions. This stage allows identification of areas where mutually compatible interests exist. Identifying areas with potential for mutual benefit is an essential skill in this stage of negotiation. There are several techniques for attempting to identify the other party's negotiating interests and the potential for mutual benefit from satisfying these interests. These techniques include:

- empathising with the other party – try to imagine the issues from their perspective
- asking questions that demonstrate your interest in understanding the other party's position
- considering possible reasons why the other party has not made a decision along the lines that you would like
- analysing the short and long term consequences for the other party agreeing to the type of decision that you are asking them to agree to.

Areas of potential mutual interest should then be explored together, with both parties generating options that might work and putting these on the table for discussion.

Hint

The choice and sequence of issues for discussion is an important element of the negotiation. It is usually wise to start with an issue that is not too important so that you can afford to make a concession and thereby show readiness to compromise. The next issue should also not be too important. This gives you the opportunity to see whether the other party will offer a reciprocal concession or is interested in playing a competitive style. Next, deal with the major issues on which you will look for serious concessions from the other party. By this stage, both parties have made an investment of time, effort and money in the negotiation and will feel some commitment to thrashing out the issues until an agreement is reached. Follow the major issues with minor ones and finish with a minor issue on which you can afford to give a concession as a final gesture towards closing the deal.

Making offers

At some point, clarifying interests and inventing options for mutual benefit must develop into the making of an offer. Once an issue has been thoroughly explored, be prepared to make an offer. However, making an offer too soon can make the other side feel that they are being pressured.

Suppliers will typically start with the highest defensible offer on each item and procurers should respond with the lowest defensible offer.

Offers should be put clearly and firmly and without any hint of apology. Initial offers are very important because they create an impression of the sincerity and the realism of each party's position. Often, the initial demand will become the anchor for the negotiation – the central point around which the negotiation proceeds. This can be a disadvantage if the opening offer is pitched too low or too high.

When deciding what to offer, keep in mind the following points:

- you have other alternatives – your BATNA?
- know what your other alternatives actually are (including your BATNA). Develop not only your BATNA, but also your second best alternative, third best and so on. The more options you have, the easier it is to negotiate a good agreement or walk away happy that you are not losing anything by doing so
- develop an understanding of the other party's BATNA. You should have developed this information during the planning and preparation phase of your negotiation. If you did not, then you should call a pause to the negotiation and do it now
- stick to your limits. Developing limits is not much use if you constantly break them. At the resistance point, let the other party know that they are getting close to your limit and that soon your best option will be to walk away and follow your BATNA.

Hint

In this context, it is hard to beat the advice contained in the Kenny Rogers song, *The Gambler*, which says: "You gotta know when to hold 'em, know when to fold 'em, know when to walk away, and know when to run."

Offering concessions

A concession is a revision of a previous position that has been held and justified. Making concessions is essential in reaching a negotiated agreement. The challenge when making a concession is to make a concession on a particular point without creating the perception of weakness and developing the expectation that other points will be readily conceded. Making a concession raises the following issues.

- **When should the concession be offered?** Make the other party work for the concession, and encourage the other party to offer the first concession. Do not offer a concession without specific pressure from the other party. If a concession is offered without pressure being applied, it is probably not worth much to the party offering the concession.
- **How much should be offered?** The concession you make need not match the one offered to you, but it must not be disproportionately small. Always value the concession from the other party's point of view. Try to identify items that are cheap for the government to give but are of real value to the other party.
- **What should be offered in return?** Concessions should be traded and should not be made without a return. Do not give concessions lightly.

Hint

- Always pair concessions. For example, *“If we agree to extend the deadline for delivery, would you be able to offer better payment terms?”*
- Offer a concession that the supplier would like to receive, not one that you want to give!
- Always value the concession in the hands of the supplier – what is it worth to them to receive this concession. Some things that are cheap for you to give, such as access to key decision makers, access to information or minor process streamlining for example, can be very valuable indeed to a supplier.

Reaching closure

In a practical sense, a negotiation closes when the parties agree on enough of the terms and details and are ready to formulate the agreement. In a legal sense, a negotiation closes when the parties have reached agreement on all the points under negotiation and have entered into a legally enforceable agreement with each other. This agreement is usually evidenced in writing.

The most effective way to close the negotiation is to simply ask the supplier whether they will agree to the current terms. The initial response will often be no, but by asking for closure the supplier has been sensitised to the need for closure. A negotiation cannot be effectively closed whilst the supplier still holds objections to some of the current terms. These objections must be identified and legitimate objections dealt with. This is easier in a climate of trust where there is willingness to work through the legitimate objections until both parties are satisfied. Failure to address and resolve objections will lead to deadlock, not closure.

Hint

Addressing objections might involve:

- avoiding arguments over the objection
- treating all objections as reasonable and logical, even if it seems superficial to you – this courtesy places the supplier under an obligation to accord the same respect to your objections
- rephrasing and repeating the objection – this is an opportunity to check that you have understood the objection, and shows that you were paying attention to what they said; it also provides an opportunity for the supplier to tell you how they would like to see the objection resolved
- finding any hidden objections – sometimes the expressed objection is not the real one; use a question like *“I think that there may be other concerns that are bothering you at this stage; what are these concerns?”*

When it seems that closure is drawing near, it may be useful to consider offering the other party something small but of value to them as a sweetener to reach closure. It is crucial to be clear that this is a final gesture and that there will be no further concessions. Such a gesture can often break through any last minute hesitation about reaching closure. The supplier will leave the negotiation feeling satisfied and fairly treated, a situation that can pay high dividends during the implementation phase of your arrangement.

Hint

During the closing stages of a negotiation, never forget that reaching agreement is in fact only the beginning of your relationship with the supplier. You will have to work together productively to implement the agreement. Be sure that your actions at this stage do not make it impossible to have a sound working relationship with the supplier.

Documentation

There are essentially two types of documents involved in negotiation.

Contracts

Most government procurement negotiations require a written contract or other formal written documentation. However, a written contract is not essential for the agreement to be legally enforceable.

Minutes and records

It is good practice to keep written records of all negotiation meetings. Negotiations can move along at a very fast pace and it is easy to lose track of what concessions were offered by whom and what follow up actions need to be taken.

Proper record keeping is also an important part of ensuring proper accountability for the negotiation process. Negotiation records may be needed if the deal is subjected to external scrutiny.

Important

Ensure that any post-offer negotiations or interviews with suppliers do not result in late offers or late amended offers being accepted outside of the terms of the offer documents. Interviews of post-offer negotiations with suppliers should be conducted with at least two officers present (either physically or on a conference phone call) and the outcome adequately recorded and, where practicable, counter-signed or faxed and formally acknowledged by the supplier's representative(s). These procedures are sensible precautions to protect all parties.

When things don't go according to plan

Sometimes the procurement negotiation simply does not run according to plan. Provided below is some information to assist when things do not go according to plan.

Breaking deadlocks

A deadlock exists when negotiations reach an impasse or stalemate. Both sides appear to have exhausted all possible concessions which might get the negotiation moving again. Deadlocks can be recognised because there is no progress, frustration levels rise, emotions become more heated and there is a sense of going over old ground over and over. Deadlocks can be broken in two main ways:

- changing something – making the situation different
- explaining something – making the situation seem different.

Break-throughs can be encouraged by pursuing some of the following options:

- lead negotiators for both sides meet informally in a neutral environment
- team leaders meet informally as above

- form sub-groups to thrash out issues from various areas of the negotiation such as technical, financial, product testing etc
- redefine the problem and then both parties work together to brainstorm possible solutions
- bring in an outside 'expert' to give a different perspective on the problem
- repeat the agency's position and add new support or a new angle
- change the subject to more easily resolved issues and then return to the deadlock issue
- suggest a recess for both parties to consider more fully the other party's position
- offer a minor (pre-planned) concession as a gesture
- offer to trade concessions.

Hint

It is always a good idea to summarise the negotiations to date, to identify issues agreed and those outstanding and endeavour to identify some issue which could be conceded to bring the other party back to the negotiation table.

Deciding to walk away

When one party walks away from the negotiation, it has the potential to spell the end of the negotiation. It is a sensitive situation that raises questions about how to get negotiations moving again. If it is the supplier who is walking away, it may be worth making the effort to persuade them back to the negotiation.

Hint

You may not be able to re-establish communications immediately, so use the time to your advantage. Review the progress of the negotiation up until the walk out. Consider the limits you set. Review the information gathered during the negotiation. If you believe that reopening the negotiation is in your interests, then take steps to do so. The breakdown of a negotiation is no time for emotion, so keep a clear focus on your own goals, interests, needs and limits. If the other party re-establishes contact, be open to finding common ground which might lead to the re-establishment of the negotiation. If the other party comes back to the negotiation, be sure to recognise that sign of commitment to reaching a mutually satisfactory agreement. When the negotiation is re-established, don't dwell on the previous difficulties.

The procurer may also make the decision to walk away from a negotiation if it seems impossible that important interests will be satisfied by dealing with this supplier.

The most crucial part of a decision to walk away from a negotiation is to compare the present situation with the BATNA. If the present situation is better than the BATNA, then there is no realistic alternative but to stay with this negotiation and try to improve the outcomes. If the BATNA is more attractive than the set of conditions that can be agreed, then it makes sense to walk away from the negotiation and pursue the more attractive option presented by the BATNA. This approach allows the decision to walk away from a negotiation to be made on rational grounds, rather than in the heat of the moment.

Remember that it may be vitally important to walk away from a negotiation in a manner that leaves open the option for the procurer to continue to do business with this supplier at some point in the future. Be cautious not to overestimate the attractiveness of your BATNA if you intend to follow this approach.

Hint

If you have decided to walk away from a negotiation, it is good practice to write a letter to the supplier to cover the following key issues:

- summarise the final position, using hedging language which allows the supplier room to change position without losing face
- summarise your position, using hedging language to let the supplier resume the negotiation gracefully
- state that the negotiation simply could not proceed because of the differences in these interests
- avoid blaming the supplier, even if you genuinely believe they are to blame
- thank the supplier for their investment of time and effort
- provide a hint to the other party of your BATNA so they know what time frame is appropriate if they do wish to resume negotiations.

When the other party is unreasonable

A very natural reaction when confronted with a difficult situation or an unreasonable person is to act on emotion without thinking of the consequences. This can cause a loss of focus on the negotiating objective or goal. Responding calmly to provocation allows time for the parties to distance themselves from emotional responses and to act in more constructive ways.

Focus on your goal

The goal of a negotiation should not be to force the other party to give in to your demands, but rather to satisfy your interests and as many of the other party's interests as possible. When confronted by a difficult situation or unreasonable person, it is useful to remind yourself of your negotiating interests. Then resume the negotiation, calmly pursuing your interests.

Try to see things from their point of view

Listen to what the supplier is saying, acknowledge their point of view and if possible, agree with them. Acknowledgment does not mean agreement, but rather that their point of view is accepted as one of many potentially valid points of view on the matter. By acknowledging the point the emotional content may be defused.

Make it easy for them to say 'yes'

It makes no sense to force the other party into an agreement if it is expected to be a lasting one. Instead, it is better to make it easy for the other party to reach their own conclusion that the agreement is desirable.

Hint

Four common reasons for the other party to resist an agreement are:

- not feeling involved or consulted
- still some interests not adequately met
- fear of losing face or problems in explaining the deal to stakeholders
- too much too fast and a sense of being overwhelmed.

Use the BATNA to your advantage

Usually, the other party will refuse to reach agreement if they believe their BATNA is better than the negotiated terms. You need to convince the other party that this belief is incorrect. A useful approach is to point out factors to the other party which would convince them that they have simply miscalculated the

strength or attractiveness of their BATNA or has underestimated the negative consequences of not reaching an agreement with you.

Hint

You might begin by letting the other party know what these consequences are. This can be achieved by asking leading questions until the other party has had the opportunity to think through the impact of not reaching an agreement. Some useful questions to encourage this are:

- **“what do you think will happen if we don’t agree?”** Perhaps the other party simply hasn’t thought about this issue
- **“what do you think I will do?”** Perhaps the other party might be under estimating the strength of your BATNA
- **“what will you do?”** Perhaps the other party is over estimating the attractiveness of their BATNA.

Countering tactics

The first step in successfully negotiating with a party who is using tactics is to identify the tactic. Most tactics depend on the fact that you will not recognise that you are being manipulated, and that you will react in a predictable way. If you identify the tactic, you are less likely to respond to it in the way the other party hoped, and you gain a degree of control over the negotiation situation.

There is a vast range of possible negotiating tactics which you might employ in your negotiations, or which you might encounter from the other party. Many of these tactics are quite obvious and you will easily recognise when they are being used against you. Others are more difficult to identify. Further information about tactics commonly used in negotiations can be found in the suggested readings listed later in this guide.

What can I read?

Suggested readings:

1. Cohen, H. *You Can Negotiate Anything*. Angus & Robertson, Sydney, 1990.
2. Dawson, R. *Roger Dawson’s Secrets of Power Negotiating*. Career Press, Franklin Lakes, New Jersey, 1995.
3. Fisher, R., Ury, W and Patton, B. *Getting to Yes*. Random Century Australia Pty Ltd, Sydney, 1992.
4. Ury, W. *Getting Past No: Negotiating With Difficult People*. Random Century Australia Pty Ltd, Sydney, 1991.
5. Walker, M. and Harris, G. *Negotiations: Six Steps to Success*. Prentice-Hall Inc., Upper Saddle River New Jersey, 1995.