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GOVERNMENT CONTRACTING



Price Negotiations 101

Your Instructor



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Agenda

- Negotiation overview
- Common circumstances where negotiation is essential
- Focus on Contract Negotiations
- Spotlight on Negotiations in Government Contracting

Negotiation Overview

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Negotiation Overview

- Part of normal everyday life
- It is often said, life itself is just one continuous negotiation
- Without realizing it, you have probably been involved in a variety of contract negotiations every day of your life
- We constantly bargain with other people to fulfill both our monetary and non-monetary needs
- At work, you are probably involved in continuing negotiations with your superiors, subordinates, and coworkers concerning a variety of personal and professional issues
- In fact, you must negotiate for most things you want in life
- You can only avoid negotiation if you have no desire for anything held or controlled by someone else

Negotiation Overview

- Is a process of communication by which two parties, each with its own viewpoint and objectives, attempt to reach a mutually satisfactory result on a matter of common concern
- A mutually satisfactory result is vital, because even though the parties may have opposing interests they also are dependent on each other
- Regardless of your profession, skill as a negotiator is essential to your success
- This skill is particularly important because from a Government or prime contractor perspective your daily work requires you to obtain supplies and services from responsible sources at fair and reasonable prices or to provide such supplies and services at a profit
- This session is intended to provide a refresher on key principles governing negotiations involving federal contracts and techniques typically found in successful negotiations

Common Negotiation Scenarios

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Negotiation Scenarios

- Labor and management, for example, need each other to produce products efficiently and effectively
- Likewise, buyers and sellers need each other to transact business. Both sides must be willing to live with the result
- Negotiation is not one party dictating or imposing terms on another. When that happens, the outcome will rarely produce mutual satisfaction
- The result can only be mutually satisfactory if both differences and common interests are considered
- To obtain agreement, you must generally sacrifice or yield something in order to get something in return
- In other words, you must give to get...but as long as the anticipated benefit is greater than your sacrifice, a negotiated agreement is beneficial

Negotiation Scenarios

- Negotiation is often a process of mutual sacrifice, but....
- Should also be a process of finding ways where both parties will have their interests optimized
- Negotiations should not just be aimed at how to split the pie
 - Instead they should be aimed at finding optimal solutions
 - Ways to make the pie larger for all concerned
 - For example, both parties benefit when negotiators find that a change in buyer requirements will enable the seller to deliver a higher-quality standard product instead of a specially built product
 - Seller realizes lower risks or perhaps more profit from the sale of a standard product
 - Buyer pays a lower price for a product that meets the buyer's real needs

Focus on Contract Negotiations

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What can be negotiated?

- Negotiation is not just about price
- Negotiations are exchanges
- Important in either a competitive or sole source environment
- Negotiations may include bargaining which embraces
 - Persuasion
 - Alteration of assumptions and positions
- While price is often paramount, desired outcomes can be achieved through myriad aspects of the business relationship
 - Requirements/specifications
 - Product Quality
 - Timeliness of delivery/schedule
 - Payment terms
 - Type of contract

Bargaining Techniques

- Aim high to produce better outcomes
- Give yourself room to compromise. Concessions are always necessary. Open with a low (but justifiable) offer; you can always raise it later
- Do not volunteer weaknesses
- Satisfy the other side's non-price issues - price is never the only issue
- Use concessions wisely...when giving, ask for something in return
- Concede slowly, and in small amounts
- Put pressure on the other side - believe in the unknown pressures facing the other side
- Use the power of patience
- Be willing to walk away from or back to negotiations. Some parties are unfair and unreasonable; deadlocks cannot always be avoided
- Be cordial and business-like
- State things in a win/win manner

Negotiation Settings

- Objectives of both parties is to arrive at a negotiated contract
- With a type of contract appropriate for the risk and reward present
- Priced to both:
 - Deliver value to buyer at a fair and reasonable price
 - Provide the seller with the greatest incentive for efficient and economical performance.”
- Depending upon scenario – there is often an interest in the long-term success and survival of government contractors
- Stated policy goals are to enhance competition by encouraging more firms to do business with the Government, thus increasing competition and quality while reducing contract costs

Negotiation Outcomes are known as “win/win,” “win/lose,” and “lose/lose”

- **Negotiation Characteristics of Win/Win Outcomes**

(The most desired outcome)

- Resolve conflicts
- Obtain both short and long term satisfaction
- Establish cordial relations
- Combine sincere efforts to satisfy the other side and solve problems
- Display attitudes appropriate to win/win outcomes
- Avoid deception
- Be persuasive
- Be respectful and polite
- Win agreements instead of arguments
- Use common sense and be open to negotiate all issues

Other Possibilities

- **Win/lose outcome**
- One side is perceived as having done significantly better at the expense of the other
- Negotiation tends to be highly competitive
 - Large degree of mistrust on both sides
 - Often occurs when there is no anticipation additional business beyond the initial transaction
 - No motivation to ensure long-term satisfaction for the other side
- **Lose/lose outcome**
- Deadlock is the typical outcome from such situation
- Deadlock occurs when final agreement cannot be obtained.
- Since both parties had a stake in a successful outcome of the negotiation (or they would not have been negotiating in the first place), both sides lose when negotiations stalemate and deadlock occurs
- Contractor may lose more than just the profit projected for the lost Government contract
 - Any contribution income (i.e., the difference between revenue and variable cost) that could have been used to help absorb contractor fixed costs may be lost
 - As a result, all fixed costs must be absorbed by the other business of the firm
 - Resulting cost increases for those items may reduce company profits and may even contribute to overall company losses
- Government does not get products and services required

Negotiations in Government Contracting

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Negotiation – Government Buyer Perspective

- Obtain the optimum market response to requirements for supplies and services, in terms of:
 - Quality
 - Timeliness
 - Price; While-
 - Accomplishing socioeconomic objectives
 - Minimizing business and technical risks
 - Maximizing competition
 - Maintaining integrity
- Assure that purchased supplies and services are:
 - Delivered or performed when and where specified in the contract
 - Acceptable, in terms of the contract requirements documents
 - Provided in compliance with other terms and conditions of the contract

Negotiation Scenarios

- Negotiation is not one party dictating or imposing terms on another
- Such outcomes can only be mutually satisfactory if both differences and common interests are considered
- To obtain agreement, you must generally sacrifice or yield something in order to get something in return. In other words, you must give to get
- As long as the anticipated benefit is greater than your sacrifice, a negotiated agreement is beneficial
- The limit on yielding is reached when one party believes that concessions would be more costly than the benefits of agreement
- While negotiation is often a process of mutual sacrifice, it should also be a process of finding ways whereby both parties will have their interests optimized under the circumstances. Negotiations should not just be aimed at how to split the pie
 - Aimed at finding optimal solutions -- ways to make the pie larger for all concerned
- For example, both parties benefit when negotiators find that a change in buyer requirements will enable the seller to deliver a higher-quality standard product instead of a specially built product
 - The seller realizes lower risks or perhaps more profit from the sale of a standard product
 - The buyer pays a lower price for a product that meets the buyer's real needs

Negotiation Scenarios (For Government Awards)

- FAR states: Any contract awarded using other than sealed bidding procedures is considered a negotiated contract
- Competitive discussions that may take place prior to award are focused on
 - Facilitating preparation of a final proposal revision that will provide the best value for the Government
 - Discussions with each offeror in the competitive range should be directed toward the offeror's proposal, and existing constraints within the offeror's organization, given the award criteria
- Government focus during evaluation of available proposals is on determining which proposal offers the overall best value
- Award of a new contract or a task/delivery order
 - Satisfactory result is a contract or order that provides for the purchase of the required supplies or services from a responsible source at a fair and reasonable price
- Termination for convenience settlement - goal is a settlement that fairly compensates the contractor for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit

Contract Award Phase

- Pre-award negotiation considerations – just to mention a few!
 - Terms and conditions
 - Socioeconomic factors
 - Price, if doing cost analysis
 - Hours
 - Labor rate forecasts
 - Indirect rates
 - Material costs
 - Inflation
 - Cost/price escalation
 - Requirements/schedule
 - Specifications
 - Funding schedule

Common Challenges Arising in Negotiations With Government

- Secrecy and lack of transparency
- Bifurcated responsibilities
 - Procuring Contracting Officers
 - Awarding contract
 - Control of funds
 - Changes process
 - Administrative Contracting Officers and their organization are responsible for
 - Direct and indirect rate forecasts
 - Business Systems
 - Cost Accounting Standards Administration
 - Contract management
 - Schedule
 - Cost performance
 - Inspection/acceptance of product

Solutions and Responses

- Identify who is vested with the authority to bind the Government
- Given the aforementioned division of responsibility....
 - That may involve engagement with multiple touch points
 - PCO
 - ACO
 - Functional Specialists – particularly where earned value, purchasing or property systems deficiencies are at issue
 - DCAA auditors – although don't expect them to negotiate – your efforts should focus on facts, clarifying misunderstandings and persuasion
- Keep the bigger picture in mind – you are focused on achieving the optimum possible outcome for your company

Questions?

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